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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Report of the Working Group on Enforced or Involuntary Disappearances

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Introduction

1. The present report of the Working Group on Enforced or Involuntary Disappearances is submitted pursuant to Commission on Human Rights resolution 1993/35, entitled "Question of enforced or involuntary disappearances". In addition to the specific tasks entrusted to the Working Group by the Commission in its resolutions 1992/30 and 1993/35, the Group has also taken into account other mandates stemming from a number of resolutions adopted by the Commission, entrusted to all special rapporteurs and working groups. These are explained in chapter I, section A, "Legal framework for the activities of the Working Group". All these tasks have been given due attention and consideration by the Working Group in the course of 1993.

2. During the year under review, the Working Group has continued to carry out the activities it has undertaken since its establishment. Its primary role, which it has described in previous reports, is to act "as a channel of communication between families of the missing persons and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and the whereabouts of the missing persons clarified". Since its inception, the Working Group has analysed thousands of cases of disappearance and other information received from Governments and non-governmental organizations, individuals and other sources of information from all over the world in order to ascertain whether such material falls under the Working Group's mandate and contains the required elements; entered cases into its data base; transmitted those cases to the Governments concerned, requesting them to carry out investigations and to inform the Group about their results; forwarded the Governments' replies to relatives or other sources; followed up investigations carried out by the Governments concerned, as well as the inquiries made by the relatives or other agencies or organizations; maintained an abundant correspondence with Governments and the sources of information in order to obtain details on the cases and the investigations; examined allegations of a general nature concerning specific countries with regard to the phenomenon of disappearances. It has also examined other matters related to its mandate with a view to submitting concrete suggestions and recommendations to the Commission. These included measures proposed or taken with a view to eliminating the practice of disappearance; research and studies with regard to the question of disappearances in general and other related matters falling within its mandate, such as the question of impunity and its effect on the phenomenon of disappearances, and the Working Group's role with regard to the application of the Declaration on the Protection of All Persons from Enforced Disappearance.

3. As in previous years, the Working Group has continued to apply the urgent action procedure in cases that allegedly occurred within three months preceding the receipt of the report by the Group, and has also promptly intervened with Governments in cases in which relatives of missing persons, or other individuals or organizations that have cooperated with the Group, or their legal counsel, have been subject to intimidation, persecution or reprisals.

4. The total number of cases being kept under active consideration as they have not been clarified now stands at 33,843. In 1993, the Working Group continued to process a backlog of some 2,639 reports submitted to it in 1991

and received some 5,523 new cases of disappearance in 30 countries. The number of countries in which disappearances have allegedly occurred since the establishment of the Working Group has gone up from 58 last year to 63 in 1993. At the time of writing, there is a backlog of about 8,000 cases owing to the chronic lack of resources of the Centre for Human Rights. An exceptional effort on the part of the staff servicing the Working Group has enabled a total of 3,162 cases to be processed this year. The Working Group is deeply concerned that the lack of resources and personnel allotted to it, the amount of which has not been increased and, in fact, has even partly decreased during the reporting period, poses a serious obstacle to the fulfilment of the Working Group's mandate.

5. On 26 July 1993, Mr. Toine van Dongen informed the Chairman of the Commission on Human Rights that, effective 1 September 1993, he would resign as a member of the Working Group on Enforced or Involuntary Disappearances. By letter dated 22 September 1993, the Chairman of the Commission informed the Centre for Human Rights that, based on a nomination by the Western European and Others Group, Mr. Manfred Nowak (Austria) had been chosen to replace Mr. van Dongen on the Working Group on Enforced or Involuntary Disappearances.

6. The present report follows the same pattern as previous reports to the Commission. It therefore reflects only communications or cases received before 3 December 1993, i.e. the last day of the third annual session of the Working Group. Urgent action cases which may have to be dealt with between that date and the end of the year, as well as communications received from Governments after 3 December 1993, will be reflected in the Working Group's next report. The graphs that appear at the end of the report do not include the year under consideration because, in the Working Group's experience, many cases are received only the following year, so that the column for the current year would not properly reflect the actual situation in a given country. In addition, the graphs for 1991 and 1992 regarding Iraq and Sri Lanka do not fully reflect the number of disappearances reported for the corresponding year, owing to a considerable backlog in the transmission of cases.

I. ACTIVITIES OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES IN 1993

A. Legal framework for the activities of the Working Group

7. The legal framework for the activities of the Working Group has been extensively described in the Group's reports to the Commission on Human Rights at its forty-first to forty-ninth sessions.

8. In resolution 1992/30, adopted at its forty-eighth session, the Commission, profo ndly concerned about the fact that the practice of enforced or involuntary disappearances was continuing in various regions of the world, decided to extend for three years the mandate of the Working Group as defined in Commission resolution 20 (XXXVI), in order to enable the Group to take into consideration all such information as might be communicated to it on cases brought to its attention, while retaining the principle of annual reporting by the Group.

9. In its resolution 1993/35, the Commission requested the Group to report on its work to the Commission at its fiftieth session and to continue to discharge its mandate discreetly and conscientiously; it also requested the Group to submit to the Commission all information it deemed necessary and any specific recommendations it might have regarding the fulfilment of its task, and to pay attention to cases of children subjected to enforced disappearance and children of disappeared persons and to cooperate with the Governments concerned to search for and identify these children.

10. In the same resolution, Governments were urged to cooperate with the Working Group by replying expeditiously to the Working Group's requests for information and to intensify their cooperation with the Group on any action taken pursuant to recommendations addressed to them by the Group; to take legislative or other steps to prevent and punish acts of enforced disappearance; to take steps to ensure that, when a state of emergency was introduced, the protection of human rights was guaranteed, particularly as regards the prevention of enforced or involuntary disappearances, and to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected. The Commission also requested the Working Group, pursuant to its mandate, to take into account the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance and to modify its working methods if necessary.

11. The Commission also reminded Governments of the need to ensure that their competent authorities conducted prompt and impartial inquiries when there was reason to believe that an enforced or involuntary disappearance had occurred in territory under their jurisdiction. The Commission, for the seventh time, repeated its request to the Secretary-General to ensure that the Working Group received all necessary assistance, in particular the staff and resources it required to perform its functions.

12. The Working Group has, furthermore, carefully considered and, where appropriate, acted on provisions of the following resolutions which amplify the Group's mandate as contained in resolutions 20 (XXXVI), 1992/20 and 1993/35.

13. In resolution 1993/7, the Commission urged all parties to cooperate in determining the fate of thousands of missing persons in the former Yugoslavia, and it requested the Special Rapporteur, in consultation with the Working Group and the International Committee of the Red Cross, to develop proposals for a mechanism to address the subject of disappearances in the former Yugoslavia. The report on a mission carried out to parts of the former Yugoslavia by a member of the Working Group, at the request of the Special Rapporteur, and the proposals resulting from subsequent consultations between the Working Group and the Special Rapporteur are contained in the addendum to the present report (E/CN.4/1994/26/Add.1).

14. In its resolution 1993/33, the Commission requested the Secretary-General to render active assistance, undertake consultations with a view to identifying individual experts who might be asked to join forensic teams or to provide advice or assistance to thematic or country mechanisms, advisory services and technical assistance programmes, and to establish, on the basis of these consultations and of continuing efforts of the Working Group, a list of such experts.

15. In its resolution 1993/39, the Commission requested the existing human rights mechanisms, including the Working Group on Enforced or Involuntary Disappearances, to examine as appropriate the cases involving the human rights of staff members of the United Nations system and their families, as well as experts, special rapporteurs and consultants and to transmit the relevant part of their reports to the Secretary-General for inclusion in his report to the Commission on Human Rights. No cases of disappearance of the above-mentioned category of persons were received by the Working Group during the period under review.

16. In its resolution 1993/41, the Commission again called upon its subsidiary bodies, including its special rapporteurs and working groups, to give special attention to questions relating to the effective protection of human rights in the administration of justice, in particular with regard to unacknowledged detention of persons, and to provide, wherever appropriate, specific recommendations in this regard, including proposals for possible concrete measures under advisory services programmes. As in the past, the Working Group has reproduced in its report allegations of a general nature, pertaining to the protection of human rights in the administration of justice, to the extent they have a bearing on the practice of disappearances.

17. In its resolution 1993/45, the Commission invited the working groups and the special rapporteurs to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression. Indeed, many of the disappearances reported to the Working Group may have been caused by the fact that persons have exercised this right. To the extent possible, the Group has tried to reflect in its report relevant information received on this subject.

18. In its resolution 1993/46, the Commission requested all special rapporteurs and working groups of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the discharge of their mandates, regularly and systematically to include in

their reports available information on human rights violations affecting women, and, in its resolution 1993/47, the Commission requested the thematic special rapporteurs and working groups to include in their reports gender-disaggregated data, as well as comments on problems of responding and the results of analyses, as appropriate, in order to exercise their mandates even more effectively. Such data has, to the extent possible, been included in the statistical summary of the country subsections.

19. In its resolution 1993/48, the Commission requested all special rapporteurs and working groups to continue paying particular attention to the adverse effect on the enjoyment of human rights of acts of violence committed by armed groups, regardless of their origin, that spread terror among the population and by drug traffickers. The Working Group has taken into consideration information received in this connection and reflected it in the appropriate country subsections.

20. In its resolution 1993/54, the Commission invited the special rapporteurs and working groups concerned to continue to pay due attention within their mandates to the matter of civil defence forces in relation to the protection of human rights and fundamental freedoms. The Working Group has reflected information received in this connection in the relevant country subsections.

21. In its resolution 1993/64, the Commission requested all representatives of United Nations human rights bodies, as well as treaty bodies monitoring the observance of human rights, to continue to take urgent steps, in conformity with their mandates, to help prevent the occurrence of intimidation and reprisals. The Commission further requested such representatives to include in their respective reports a reference to allegations of intimidation or reprisal, as well as an account of action taken by them in this regard. The Working Group has reflected in the country subsections cases in which it has taken action in the framework of its prompt intervention procedure.

22. In its resolution 1993/81, the Commission called upon special rapporteurs, special representatives and working groups of the Commission on Human Rights and of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, within their mandates, to pay particular attention to the plight of street children. The Working Group has been informed of several cases of disappearance of street children and of the intimidation of organizations working with them. It has, furthermore, initiated contacts with non-governmental organizations concerning the disappearance of street children.

23. In its resolution 1993/87, the Commission requested its special rapporteurs and representatives, as well as the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention, to include in their recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services.

24. In its resolution 1993/94, the Commission requested the special representatives, special rapporteurs and independent experts of the Commission to do their utmost to submit their reports in time to enable the secretariat to meet the objectives set out in that resolution. The Working Group has again made a major effort to expedite its work, and its present annual report

was submitted to the services responsible for translation and reproduction in the week following its third annual session, at which the report was adopted.

25. In its resolution 1993/97, the Commission urged the Government of Indonesia to invite the Special Rapporteur on the Question of Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to visit East Timor. By note verbale dated 26 August 1993, the Secretary-General transmitted this resolution to the Government requesting it to inform him of the steps it envisaged taking in implementing the relevant provisions of the resolution. At the time of the adoption of the present report, no reply had been received from the Government of Indonesia to the note verbale sent by the Secretary-General.

26. The Working Group also took into account resolution 1993/5 of the Sub-Commission on Prevention and Protection of Minorities, entitled "Report of the Working Group on Contemporary Forms of Slavery", in which the Sub-Commission requested the Secretary-General to transmit to a number of committees, the special rapporteurs concerned and the Working Group on Enforced or Involuntary Disappearances, the above-mentioned report.

B. Meetings and missions of the Working Group

27. The Working Group held three sessions in 1993. The thirty-ninth session was held in New York from 17 to 21 May, and the fortieth and forty-first sessions were held in Geneva from 24 September to 1 October and from 24 November to 3 December respectively. During these sessions, the Working Group held seven meetings with representatives of Governments and national human rights commissions, eight meetings with representatives of human rights organizations, associations of relatives of missing persons, families or witnesses directly concerned with reports of enforced disappearances. At the Working Group's invitation, Mr. Louis Joinet, in his capacity as expert member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and co-author of a progress report on the question of the impunity of perpetrators of human rights violations, met with the Working Group at its fortieth session.

28. As in previous years, the Working Group examined information on enforced or involuntary disappearances received from both Governments and non-governmental organizations and decided, in accordance with its methods of work, on the transmission of such reports or observations received thereon to the Governments concerned. It also requested Governments to provide complementary information whenever necessary for the clarification of cases. The Group also decided to ask, once again, the Governments concerned, about the implementation of the recommendations made by the Group following its field missions to those countries which had taken place in previous years. In this regard, in 1993 it addressed a letter to the Governments of the Philippines and Sri Lanka.

29. From 4 to 13 August 1993 a member of the Working Group carried out a mission to parts of the territory of the former Yugoslavia in order to determine which mechanism might usefully be proposed to trace missing persons in the former Yugoslavia (see paras. 40-43 below).

C. Communications with Governments

30. In 1993, the Working Group transmitted 3,162 new cases of enforced or involuntary disappearance to the Governments concerned. Among these cases, approximately 523 had been received in 1993, while the rest were part of the Working Group's backlog; 122 of the cases transmitted were reported to have occurred in 1993; 151 were transmitted under the urgent action procedure, of which 18 were clarified during the year. Many of the cases received were referred back to the sources as they lacked one or more elements required by the Working Group for their transmission or because it was not clear whether they fell within the Working Group's mandate; other cases were considered inadmissible within the context of that mandate.

31. The Group also transmitted to the Governments concerned further information on cases previously transmitted and observations provided by the sources on the Governments' replies; it reminded Governments of the outstanding cases and, when requested, retransmitted the summaries of those cases or the diskettes containing those summaries to them. In addition, all outstanding cases transmitted during the preceding six months under the urgent action procedure were retransmitted in January and July 1993.

32. Governments were informed about clarifications and about cases for which the reply received from the Government had been transmitted to the source and would be considered a clarification provided the source did not make objections within a period of six months.

33. The Working Group transmitted to Governments "prompt intervention" communications concerning intimidation of or reprisals against those persons referred to in Commission resolutions 1993/35 and 1993/64. More information on the action taken in this context is contained in the country subsections.

34. In accordance with paragraphs 5, 6, and 8 of Commission resolution 1993/47 and as decided at its thirty-ninth session in New York, the Working Group reminded the Governments of the Philippines and Sri Lanka of recommendations it had formulated in its reports on visits made to those countries in previous years and asked them to provide the Group with relevant information on measures taken by them in order to implement these recommendations. This information is reflected in the subsections dealing with those particular countries.

D. Communications with non-governmental organizations and relatives of missing persons

35. The Working Group has continued to attach great importance to its contacts with non-governmental organizations and relatives of missing persons, and has not only received a great deal of information orally and in writing from them, but has also kept these organizations and relatives constantly informed of the state of its investigation into the reported cases.

36. As in previous years, the Working Group received reports and expressions of concern from non-governmental organizations, associations of relatives of disappeared persons and individuals about the safety of persons actively engaged in the search for missing persons, in reporting cases of disappearance

or in the investigation of cases. In some countries, the mere fact of reporting a disappearance entailed a serious risk to the life or the security of the person making the report or his/her family members. In addition, individuals, relatives of missing persons and members of human rights organizations were frequently harassed and threatened with death for reporting cases of human rights violations or investigating such cases.

E. The question of disappearances in the former Yugoslavia

37. Over 11,000 cases of disappearances in the former Yugoslavia were reported to the Working Group in 1992, most of which occurred during the hostilities between Croatian forces and the Yugoslav national army in 1991.

38. For the reasons explained in its previous report to the Commission of Human Rights, the Working Group decided to ask the Commission for guidance on how best to deal with these cases. The Group referred inter alia to a recommendation contained in the first report of the Special Rapporteur on the former Yugoslavia that a special procedure be established which could develop its own working methods taking into account the special circumstances of the situation.

39. Subsequently, the Commission adopted resolution 1993/7, in which it urged all parties to cooperate in determining the fate of thousands of missing persons in the former Yugoslavia and requested the Special Rapporteur, in consultation with the Working Group on Enforced or Involuntary Disappearances and the International Committee of the Red Cross, to develop proposals for a mechanism to address the subject of disappearances in the former Yugoslavia.

40. As a result of consultations between the Special Rapporteur and the Chairman of the Working Group, it was decided to request Mr. van Dongen, a member of the Working Group, to conduct a mission to the Republic of Croatia and the Federal Republic of Yugoslavia. The purpose of the mission was to establish contact with relevant government officials, including military officers who were involved in areas of combat at times when disappearances might have taken place, representatives of intergovernmental and non-governmental organizations, as well as the families of those who had disappeared, in order to determine which mechanisms might usefully be proposed with a view to elucidating the fate and whereabouts of the missing persons.

41. The mission to parts of the former Yugoslavia took place from 4 to 13 August 1993. Mr. van Dongen visited Zagreb and Belgrade, and two United Nations Protected Areas: Sector West and Sector East, particularly Vukovar. Given the conditions prevailing in the area, it proved impossible to organize a visit to other parts of the former Yugoslavia, notably Bosnia and Herzegovina, other than a visit to Sarajevo by the Special Rapporteur on his own on 11 and 12 August, in the course of which he discussed the question of missing persons with various interlocutors on his own account.

42. In the report he submitted to the Working Group in September 1993, Mr. van Dongen proposed that all cases of missing persons in any part of the former Yugoslavia should be considered under a special procedure, regardless of whether the victim was a civilian (non-combatant) or a combatant, and

regardless of whether the perpetrators were in effect connected to the Government or not. In other words, the target group of missing persons would be wider than the one covered by the Working Group.

43. At its fortieth and forty-first sessions, the Working Group considered the question of missing persons in the former Yugoslavia on the basis of Mr. van Dongen's report. Following extensive debate, including consultations with the International Committee of the Red Cross, the Working Group decided to submit proposals to the Special Rapporteur for a mechanism to address the subject of disappearances in the former Yugoslavia. These proposals are contained in the report on the mission (E/CN.4/1994/26/Add.1) and may be summarized as follows:

(a) All cases of missing persons in any part of the former Yugoslavia should be considered under the same special procedure, geared to the exigencies of the situation;

(b) That special procedure should be implemented as a joint mandate by one member of the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights in the former Yugoslavia, resulting in joint reports to be submitted to the Commission on Human Rights;

(c) The Secretary-General should provide sufficient financial and personnel resources to the special procedure in order to guarantee its effective functioning.

44. At its forty-first session, the Working Group met with the Chargé d'affaires of the Permanent Mission of Croatia to the United Nations Office at Geneva, Mr. Nevon Madey, who informed the Working Group that, according to the Croatian Red Cross Tracing Service, as of 18 November 1993, there were 11,103 missing persons in the Republic of Croatia, with a significant portion of those in the municipality of Vukovar. He informed the Working Group that the families of these persons had great faith in the United Nations bodies dealing with this matter, and he appealed to the Working Group to move more efficiently in determining the whereabouts of the missing persons.

F. The question of impunity

45. In its previous report to the Commission on Human Rights, the Working Group reported that, in accordance with its mandate, it had decided to continue its consideration of the question of impunity in 1993. Thus, at its thirty-ninth session, the Working Group decided to send a letter to all Governments which had yet to respond to its letter of 30 June 1992, requesting their comments and observations on the question of impunity. The addressees were encouraged to consider this issue in the context of enforced and involuntary disappearances in general, and in particular in relation to a number of tentative considerations prepared by the Working Group on the basis of its own experience, and of reports submitted by non-governmental organizations. On 10 August 1993, the secretariat sent out the Working Group's reminder letter to the approximately 150 Governments which had not

yet responded to the 1992 letter. With a view to enlarging the scope of the analysis and to making relevant recommendations the Working Group noted the following in its letter:

(a) Habeas corpus is one of the most powerful legal tools for discovering the fate or whereabouts of a disappeared person; its rapid implementation could help to prevent grave violations of human rights from occurring and enhance the accountability of those responsible for disappearances and arbitrary detention. Consequently, it is essential that legislation provide for an expeditious and easily available habeas corpus procedure which gives judges the possibility of investigating thoroughly the fate or whereabouts of detainees, including unhampered access to all places at which persons deprived of their liberty are held and to each part thereof, as well as to any place in which there are grounds to believe that disappeared persons may be found. Those in charge of conducting investigations (or carrying them out), as well as those who are requested to provide information or to implement measures required by the judges should be accountable for the rapid and fair accomplishment of their duties.

(b) A proper functioning of the administration of justice is an important element to ensure that those responsible for disappearances are identified and do not go unpunished. Consequently, such administration should be provided with enough resources for its functioning, be protected from intimidation and have full cooperation from all branches of the administration. In particular, up-to-date and accessible registers of detainees should make it possible to learn the whereabouts of any person deprived of his liberty, as well as the identity of the person(s) responsible for the arrest and detention.

(c) Steps should be taken to ensure that all persons involved in the investigation of disappearances, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisals. Any ill-treatment, intimidation or reprisals or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure should be appropriately punished.

(d) All acts of enforced disappearance should be offences under criminal law, punishable by appropriate penalties which should take into account their extreme seriousness.

(e) The investigation, prosecution and punishment of those responsible for disappearances should conform to internationally recognized principles of due process of law and should not be subject to any limitation of time.

(f) The investigation of disappearances and the publication of the results of the investigation are perhaps the most important means of establishing accountability for the Government itself. The identity of the victims, as well as the identity of those responsible for devising policies and practices, and who carried out disappearances and those who knowingly aided and abetted them, should be made known to the public.

(g) No laws or decrees should be enacted or maintained which, in effect, immunize the perpetrators of disappearances from accountability.

(h) The duty to investigate, prosecute and punish those responsible for gross abuses such as disappearances is proportionate to the extent and severity of the abuses and the degree of responsibility for such abuses. In making such determinations, it is essential that there should be no granting of impunity either because of the identity of those responsible for gross abuses of human rights or because of the identity of the victims.

(i) The prosecution and punishment of offences involving gross violations of human rights such as disappearances should be dealt with in civilian courts, even if those under prosecution have been or are members of the armed forces.

(j) Obedience to orders (in circumstances other than duress) is not a valid defence in the process of determining criminal responsibility for disappearances. However, in determining the appropriate punishment, obedience to orders may be regarded as a mitigating circumstance according to the facts of each case.

46. In addition to the replies from Governments which were analysed in last year's report (Austria, Bahrain, Belarus, Bolivia, Brunei Darussalam, Burkina Faso, Chile, China, Colombia, Cuba, Cyprus, Ecuador, Egypt, Iran (Islamic Republic of), Iraq, Malaysia, Mexico, Morocco, Myanmar, Namibia, Pakistan, Panama, the Philippines, Qatar, Singapore, Tunisia, Yugoslavia, Western Samoa), the Governments of the following countries responded to the Working Group's questionnaire: Australia, Belgium, Canada, Chad, Costa Rica, Finland, Germany, Guyana, Honduras, Jamaica, Jordan, Malta, Mauritania, Mauritius, Norway, Sri Lanka, Turkey, Venezuela and Viet Nam. It should be noted that the responses from Peru and Uruguay were received in 1992, after the close of the Working Group's last annual session and are therefore reflected in this year's report.

47. The Working Group also received comments and observations on the question of impunity from the following non-governmental organizations: American Association of Jurists, Amnesty International, Centro Nicaraguense de Derechos Humanos, Federacion Latinoamericano de Asociaciones de Familiares de Detenidos Desaparecidos, Fédération international des droits de l'homme, Human Rights Advocates, Ligue international pour les droits et la liberation des peuples, Organisation mondial contre la torture.

Summary of responses received by the Working Group

(i) Responses received from Governments

48. The responses received from Governments may be divided into two groups: (i) those which reported they had no comments or observations on the matter; and (ii) those which responded by commenting on the Working Group's tentative considerations or by referring to provisions related to the question of impunity in their national legislation. It should also be noted that not all of the responding Governments chose to address directly the questions and concerns raised by the Working Group in its reminder letter.

49. With respect to the first group noted above, Canada informed the Working Group that it would not be responding to the questionnaire concerning impunity. Finland stated that it did not have "... at this point, any comments or observations in relation to the question of impunity as it affects the practice of enforced or involuntary disappearances in general, and, in particular in relation to the tentative considerations mentioned in ... this letter". In their answers Germany, Jordan and Mauritius pointed out that enforced or involuntary disappearances or impunity did not occur in their countries, and that adequate legislation and procedures existed, should such cases ever occur. Belgium, Jamaica and Viet Nam have confirmed the receipt of the Working Group's letter. However, the Working Group is still waiting for a more substantive response from the competent national authorities.

50. With respect to the second group noted above, Australia stated that the writ of habeas corpus was an easily available prerogative writ by which the Crown had a right to inquire into the causes for which its subjects were deprived of their liberty. The courts had the power to cross-examine the parties and even to order the full trial of a factual case. An applicant for habeas corpus was not precluded from further application by reason of the refusal of one particular judge to issue the writ. According to its jurisprudence, the burden of proof rested prima facie on the applicant and then passed on to the restraining body or person to justify that restraint. Australia further agreed that pretrial detention of a person in custody was unlawful if he or she was detained in a place other than that sanctioned by the law. Coroners had jurisdiction to hold an inquest concerning the manner of the death of a person who died in custody or while detained at a mental hospital. Action might be taken against the employees of corrective institutions who failed to comply with statutory provisions, rules or instructions concerning the treatment of persons detained or imprisoned. Australia also reported that Commonwealth officers had, in the absence of statutory authority, no special immunity from criminal law, but were bound by it like any other citizen. Nevertheless, there were occasions which in the interest of justice necessitated the granting of pardons or immunity from prosecution. That departure from the general rule required very strong justification. Furthermore, Australia stated that magistrates or justices of the peace were required to visit prisons regularly to hear and investigate complaints of prisoners and report thereon.

51. Chad drew the Working Group's attention to the fact that the country was undergoing a complicated process of democratization. Thirty years of civil war and dictatorship had left Chad in a situation of insecurity and ethnic rivalry, which had an unfortunate impact on the possibilities of protecting the rights and freedoms of its citizens. In the interest of national reconciliation the Amnesty Law had been enacted in 1992. The police forces had also been given the task of collecting all weapons illegally held by certain groups throughout the country.

52. Costa Rica agreed with the considerations presented by the Working Group and called for even more efficient means to control the functioning of the legal system, as well as the treatment of persons imprisoned or in custody.

53. Guyana stated that its legislation included the possibility of instituting a writ of habeas corpus. However, since the incidence of disappearances and arbitrary detentions was low, the Courts of Guyana did not hear many habeas corpus applications.

54. Honduras stated that the institution of habeas corpus formed an integral part of its legislation. Although no specific provisions of the Honduran legislation dealt with disappearances or impunity, other legal safeguards existed to protect the integrity of detained persons. Furthermore, the Government of Honduras had set up an ad hoc committee to lead the reforms of the country's legal system and police forces. Those reforms would include the creation of an independent Minister for Human Rights.

55. In its response Mauritania referred to the Amnesty Laws of 29 July 1991, which granted full amnesty to all members of the security and armed forces for actions undertaken during the period 15 April 1990 to 15 April 1991. Mauritania also reported that that amnesty had resulted in a situation of peace and reconciliation in the country.

56. Malta reported that though it did not have a habeas corpus writ included in its laws, the Criminal Code provided expeditious procedures to establish the whereabouts of detainees. Malta further stated that the normal provisions against arrest, murder and bodily injury were strong enough to cover the instances contemplated. The Government of Malta also agreed that no laws or decrees should ever be enacted which immunized perpetrators of disappearances from accountability.

57. Norway pointed out that persons who committed or ordered grave violations of human rights must be held individually responsible. Furthermore, the Government of Norway also called for an international tribunal to be established with the capacity to try certain particularly serious crimes. That institution could either take the form of an international criminal court or several ad hoc regional tribunals under the auspices of the United Nations. As concerned national legislation relevant to the question of impunity, the Government of Norway stated that the Norwegian Penal Code to a large extent applied the principle of universality. Furthermore, obedience to orders could not lead to acquittal of the accused under either the Norwegian Military or the Civil Penal Codes. However, obedience under duress might be regarded as a mitigating circumstance depending on the facts of each case. Disappearances should be dealt with exclusively by civilian courts.

58. Peru stated that in accordance with its Political Constitution every individual had the right to personal freedom and security. Peru further noted that enforced disappearance constituted an offence under its Criminal Code. Those provisions were also aimed at reducing impunity for such offences. Reports of enforced and involuntary disappearances or arbitrary detentions were investigated by the Government Attorney's office through the District Procurators, in accordance with established procedures. In zones declared to be in a state of emergency, District Procurators were also authorized to enter detention centres in order to verify the situation of detainees and persons reported missing.

59. Sri Lanka stated that the writ of habeas corpus was a legal remedy guaranteed by the Constitution. Applications were entertained by the Court of Appeal and by the provincial High Courts established throughout the country. Furthermore, since freedom from arbitrary arrest was a fundamental right under the Constitution, recourse was also available to the Supreme Court by way of an application for the infringement of a fundamental right in cases of alleged disappearances where the allegations were levelled against a governmental authority. The existence of a state of emergency could not affect those rights. Sri Lanka further reported that all magistrates, the Human Rights Task Force and ICRC had unhindered access to all places of detention. There were no provisions of law in Sri Lanka which could operate to absolve the liability of persons responsible for disappearances. Sri Lanka reported that in its legal system obedience to unlawful orders did not operate as a defence to any criminal charge.

60. Turkey, in its response, agreed with the Working Group's considerations. Furthermore, Turkey stated that its legislation, and in particular the Penal Code, was in full conformity with the principles reflected in the Working Group's letter.

61. Uruguay stated that it guaranteed all inhabitants of the country the real and effective enjoyment of human rights. Uruguay also agreed with the principle that every effort had to be made to elucidate all cases of human rights violations committed under the previous regime, including enforced or involuntary disappearances.

62. Venezuela agreed with the considerations of the Working Group and referred in its answer to the relevant provisions in its own legislation. Those provisions should in principle secure the adequate functioning of the judicial process. However, some legislative and structural problems might still give rise to cases of impunity. On the legislative level it should be noted that a number of laws still in force in Venezuela must be considered anachronistic and therefore inadequate. Investigations might also be slowed down because of individual neglect or institutional deficiencies within the courts and police forces.

(ii) Responses received from non-governmental organizations

63. As a response to the Working Group's questionnaire, the American Association of Jurists submitted an article on the subject of habeas corpus along with a commentary, prepared and signed by a number of non-governmental organizations, on the Sub-Commission study on impunity (E/CN.4/Sub.2/1993/6). The American Association of Jurists in particular urged the Working Group to initiate new means of safeguarding the fundamental right of detained persons to a due process of law, including the habeas corpus procedure. The Association found it essential to develop a set of basic principles which, if implemented, could contribute to the elimination of the practice of impunity. Those fundamental principles should eventually be transformed into a legally binding international instrument.

64. Amnesty International drew the Working Group's attention to the Amnesty Laws recently enacted in Mauritania. On 29 May 1993 the Mauritanian Parliament had passed a bill granting total amnesty to members

of the security forces for all offences committed during the period 1989 to 1992. During that period some 400 Mauritanians had reportedly been executed extrajudicially and thousands detained for long periods without trial. Dozens more had disappeared. Amnesty International and numerous other human rights organizations had called for an independent inquiry into these allegations. Amnesty International had further requested that each of these cases should be investigated so that those responsible could be brought to justice. The Mauritanian authorities had reportedly ignored these appeals.

65. The Centro Nicaraguense de Derechos Humanos expressed its concern for the insecurity, accelerating violence and continuing human rights violations which dominated everyday life in Nicaragua. The root causes of that situation were to be found partly in the sharp social and political polarization and partly in the rising unemployment and deepening poverty which affected the majority of the population. According to the organization, the most alarming side of this situation is that the authorities are passive and reluctant to take action in order to curb the violence and bring persons guilty of human rights abuses to justice. The organization recognizes the need for institutional reforms in the legal system, but also stresses the necessity of dialogue and negotiations between the conflicting parties as a step towards national reconciliation.

66. In its response, the Federacion Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos wished to draw the Working Group's attention to the violent situation in Venezuela and a number of recent attacks aimed at members of human rights organizations. No action had reportedly been taken to find and prosecute those responsible for the abuses.

67. In its "Report of an investigation into the murder of children in Brazil", the Fédération internationale des ligues des droits de l'homme discusses the question of impunity as part of the problem of summary executions of minors. The so-called death squads are reportedly often composed of members of the police forces. The authorities are also said to accord political and judicial protection to the perpetrators, which makes investigations into these cases extremely difficult to conduct.

68. The response received from Human Rights Advocates focused on the Salvadorean Truth Commission and the Amnesty Laws enacted in El Salvador. The peace accords in El Salvador contained three provisions mainly dealing with the situation of human rights: (i) the United Nations Observer Mission in El Salvador (ONUSAL) was established; (ii) an ad hoc commission was given the task of reviewing the status of military officers; (iii) the Truth Commission was created with a mandate to investigate cases of human rights violations during the civil war and to recommend reforms. In its final report the Truth Commission had recommended that a number of named army officers be removed because of their involvement in past abuses. Moreover, it had called for civilian control over the security forces and a special investigation of the death squads. The Commission had also demanded the resignation of the entire Supreme Court as a part of the judicial reform. Shortly after the release of the Commission's report the Salvadorean Legislature had passed a

sweeping amnesty for everyone involved in past human rights violations. Some observers had criticized the Truth Commission for not taking a clear stand against those Amnesty Laws which were seen as incompatible with its recommendations.

69. The Ligue international pour les droits et la liberation des peuples responded to the questionnaire by submitting a study on the question of impunity. The study seeks to clarify the issue by presenting examples taken from Latin America, Africa and Eastern Europe. It also addresses the problem of impunity in the context of economic, social and cultural rights. As a conclusion the author calls for the establishment of a working group, a special rapporteur or an international penal court to deal with the problem of impunity.

70. The World Organisation Against Torture drew the Working Group's attention to the apparent impunity granted to persons accused of serious human rights violations during the military regime in Chile. The organization fears that a draft bill proposed by President Patricio Aylwin aimed at resolving the trials still pending against these individuals will further strengthen the 1978 Amnesty Laws and limit the possibilities of bringing those guilty of serious crimes to justice.

(iii) Consultations with the Special Rapporteur of the Sub-Commission

71. At its thirty-ninth session the Working Group decided to invite Mr. Louis Joinet, in his capacity as expert member of the Sub-Commission, to meet with the Working Group at its fortieth session in order to discuss points of mutual interest. With his co-author, Mr. El Hadji Guissé, Mr. Joinet has so far submitted a working paper (E/CN.4/Sub.2/1992/18) and a progress report (E/CN.4/Sub.2/1993/6) on this question, with a view to submitting a final report to the next session of the Sub-Commission in 1994.

72. The Working Group stressed the need to enforce and supervise the Declaration on Disappearances, especially and most relevantly article 4 concerning impunity. Mr. Joinet pointed out that his primary focus was on amnesty laws and the dilemma of national reconciliation, i.e. that the peace process might secure impunity for gross violators. The Group stressed that relatives of missing persons had the absolute right under any circumstances to know the fate and whereabouts of their missing relatives. Furthermore, the Working Group remained convinced that one of the most efficient means of putting an end to the practice of disappearances consisted in punishing, without any exception, the perpetrators of such crimes who had been identified.

73. In the view of the Working Group, the question of impunity constitutes one of the main obstacles in the work to eliminate the practice of enforced disappearances. Therefore, the policies, institutional shortcomings and legislative deficiencies which ultimately contribute to the protection of perpetrators need to be thoroughly investigated. To this end the Working Group will continue to examine the question of impunity within the context of its mandate. The Working Group will further endeavour to strengthen the supervision of the Declaration on Disappearances, especially and most relevantly article 4 concerning impunity.

G. Declaration on the Protection of all Persons from Enforced Disappearance: obstacles to the proper application of the Declaration and recommendations for overcoming them

74. On 18 December 1992 the General Assembly, in resolution 47/133, adopted the United Nations Declaration on the Protection of all Persons from Enforced Disappearance. The Working Group, which participated actively in the elaboration of this Declaration, welcomes it as a milestone in the united efforts to combat the practice of disappearance and considers that it constitutes an important basis for its own future work. Many proposals and recommendations which the Working Group has adopted over the years and published in its annual reports have been reflected in the Declaration. In accordance with the Declaration, the systematic practice of disappearance is of the nature of a crime against humanity and constitutes a violation of the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture; it also violates or constitutes a grave threat to the right to life. States are under an obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, in particular to make them continuing offences under criminal law and to establish civil liability.

75. The Declaration also refers to the right to a prompt and effective judicial remedy as well as unhampered access of national authorities to all places of detention, the right to habeas corpus, the maintenance of centralized registers of all places of detention, the duty to investigate fully all alleged cases of disappearance, the duty to try alleged perpetrators of disappearances before ordinary (not military) courts, the exemption of the criminal offence of acts of enforced disappearance from statutes of limitations, and special amnesty laws and similar measures leading to impunity.

76. The World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, welcomed the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance and called upon all States "to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators".

77. In its resolution 1993/35 of 5 March 1993, entitled "Question of enforced or involuntary disappearances", the Commission on Human Rights invited all Governments to take appropriate legislative or other steps to prevent and punish the practice of enforced disappearances, with special reference to the Declaration and to take action to that end nationally, regionally and in cooperation with the United Nations. In the same resolution, the Commission

also requested the Working Group to take into account the provisions of the Declaration and invited it to cite in its future reports any obstacles to the proper application of the Declaration and to recommend means of overcoming them.

78. At its thirty-ninth session, the Working Group decided to send a letter to all States Members of the United Nations and to a number of non-governmental organizations concerned with disappearances. On 27 July 1993 a letter was sent to all Member States requesting information on the action they had taken to implement the provisions of the Declaration at the national level and what, if any, obstacles had been encountered. On 30 July 1993, a letter was sent to non-governmental organizations requesting information on any obstacles encountered in implementing the Declaration in countries of concern to their organization.

79. At the time of the adoption of the present report, the following countries had provided replies to the Working Group's letter: China, Colombia, Cuba, Ethiopia, India, Iraq, Nepal, Nigeria, Pakistan, Syrian Arab Republic and Viet Nam.

80. The following non-governmental organizations sent the Working Group their observations on obstacles to the proper implementation of the Declaration: Andean Commission of Jurists (Colombian branch), Association of Family Members of Victims of Disappearances (ANFASEP, Peru), Association for the Defence of Human Rights in Morocco (France), the Monsignor Oscar Arnulfo Romero Committee of Mothers and Family Members of Victims of Disappearances and Political Assassinations in El Salvador (Co-Madres, Mexico), the International Federation of Human Rights (FIDH), the National Coordination of Human Rights (CNDDHR, Peru), the Independent National Committee for the Defence of Mexican Prisoners, Persecuted and Missing Persons and Political Exiles (CNI, France), the Nicaraguan Association for Human Rights (ANPDH), Peace and Justice Service (SERPAJ, Uruguayan Branch), the Philippine Alliance of Human Rights Advocates (PAHRA) and the Sikh Human Rights Internet.

81. In the replies received from Governments one Government informed the Working Group that its letter had been transmitted to the competent authorities (Viet Nam), and two others stated that there were no cases of enforced or involuntary disappearance (Nigeria, Syrian Arab Republic). Others asserted that disappearances had only occurred during former regimes (Cuba, Ethiopia, Nepal). In this connection the Government of Nepal informed the Working Group that a high-level committee of legal experts and specialists had been formed in order to search for persons who had disappeared under the Panchayat system (before May 1990). The Government of India provided the Working Group with a booklet entitled "Legal provisions for protection of human rights in India" which, however, contains no information on the implementation of the Declaration on Disappearances.

82. Most governmental replies cited a number of constitutional and legal guarantees against arbitrary detention, such as habeas corpus, the criminal offence of unlawful detention, or the independence of the judiciary, without referring to obstacles encountered in implementing the Declaration on Disappearances or to the need for enacting specific legislation to combat the practice of disappearance. Pakistan stated that "since the existing laws

fully protect the rights of people against disappearances, further legislation at this stage would not be necessary", and Iraq asserted that, in principle, "there are no obstacles impeding the implementation of the provisions contained in the Declaration". In this context, reference was made to the duty of the Department of Public Prosecutions to make two inspection visits to every police station and detention centre.

83. China asserted that "owing to differences in their history, culture and legal systems, the specific provisions of countries' legal procedures for investigating and dealing with cases of disappearances may not entirely correspond. International society must recognize and respect these divergencies". In the context of describing recent efforts to establish the essential guarantees of the rule of law, the Transitional Government of Ethiopia reported that "on the basis of their petition for habeas corpus, the Central Criminal Court has released thousands of detainees on bail including former governmental officials and army commanders on the grounds that the Special Prosecutor's office was unable to provide adequate evidence that would warrant their further detention. Such procedures are believed to safeguard the rights of people from arbitrary detention and enforced or involuntary disappearance".

84. The Government of Colombia provided detailed information concerning various projects for enacting specialized legislation against acts of enforced disappearance. These bills included provisions permitting detention only in officially registered places of detention and establishing as a criminal offence the deliberate withholding of information on the whereabouts of disappeared persons. In addition, various governmental authorities in Colombia had initiated a joint project for evaluating their experiences concerning disappearances, establishing a common data base on disappearances and cooperating with non-governmental organizations active in this field.

85. From the replies of non-governmental organizations received so far, it appears that they have focused more on the obstacles to the proper application of the Declaration. While some only confirmed the receipt of the Working Group's letter (CNI, FIDH), others submitted detailed information primarily based on their experiences in particular countries, such as Colombia, El Salvador, India, Morocco, Nicaragua, Peru, the Philippines and Uruguay. Some contributions contained detailed conclusions and recommendations for more efficient action against the widespread practice of disappearances in their countries.

86. The obstacles to the proper implementation of the Declaration cited in most of the replies from non-governmental organizations are fairly similar and may be summarized as follows:

(a) Internal strife and armed conflicts have been cited as the major political reasons for the widespread practice of enforced disappearances;

(b) In most cases there appears to be a lack of political will on the part of Governments to terminate the phenomenon of disappearances;

(c) Far-reaching emergency laws and regulations lead to serious restrictions on the right to habeas corpus, to uncontrolled powers of military authorities, and to a general inefficiency of the civilian judicial system, thereby creating a climate conducive to acts of enforced disappearance;

(d) Broad powers of arrest authorizing or at least tolerating the carrying out of arrests by plainclothed security personnel in unmarked vehicles who do not give reasons or identify themselves, are mentioned as a common practice leading to disappearances;

(e) The allowing of incommunicado detention and the lack of central computerized registers of all detainees and of daily records of places of detention are cited as serious obstacles to an efficient implementation of the Declaration;

(f) Most Governments have not enacted special laws explicitly prohibiting the practice of enforced disappearance in accordance with articles 3, 4 and 5 of the Declaration. In countries where all acts of enforced disappearance are established as offences under criminal law, these offences are often defined in such vague terms that it seems extremely difficult to prove the causal relation between arrest and disappearance;

(g) The lack of impartial investigation of all cases of alleged disappearances, the lack of access of civilian investigatory agencies to all places of detention (in particular military detention centres) and the lack of sincere efforts to identify victims of disappearances are serious obstacles to tracing disappeared persons;

(h) Amnesty laws, due obedience laws, statutes of limitations, presidential pardons and the lack of impartial proceedings before military courts lead to impunity for perpetrators of enforced disappearances and thereby constitute a serious obstacle to the prevention of further acts of disappearances;

(i) Finally, many non-governmental organizations reported that most Governments have so far failed to distribute the Declaration among their legislative, judicial and administrative authorities or to make it available to the public at large.

87. Rather than reiterating the substantive recommendations contained in its earlier reports, the Working Group makes the following procedural recommendations aimed at a more efficient international monitoring to ensure the proper application of the Declaration by all States Members of the United Nations. The Working Group thus recommends that the Commission on Human Rights establish a reporting system by which all Governments are requested to submit to the Secretary-General periodic reports on all measures they have adopted to implement the Declaration and on all difficulties affecting its implementation.

88. It further recommends that the Commission on Human Rights entrust the Working Group with the task of examining these reports and transmitting comments and recommendations to the Governments concerned. Whenever requested by the Working Group, Governments should send representatives for the examination of their reports.

II. INFORMATION CONCERNING ENFORCED OR INVOLUNTARY DISAPPEARANCES IN VARIOUS COUNTRIES REVIEWED BY THE WORKING GROUP

Afghanistan

Information reviewed and transmitted to the Government

89. The Working Group's activities in relation to Afghanistan are recorded in its last seven reports to the Commission. 1/

90. During the period under review, the Working Group transmitted to the Government of Afghanistan, by letter dated 15 June 1993 one newly reported case of disappearance which was reported to have occurred in 1992.

91. By the same letter, the Working Group reminded the Government of Afghanistan of the five outstanding cases transmitted in the past.

92. At the time of the adoption of the present report, no information had been received by the Working Group from the Government of Afghanistan with regard to these cases. The Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

Information and views received from relatives of missing persons or from non-governmental organizations

93. The newly reported case of disappearance was received from a relative of the missing person. The case concerned a United States citizen of Afghan origin who was arrested in 1992 in Kabul, allegedly by General Massoud's forces, on suspicion of opposing the Government.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	6	0
III.	Total number of cases transmitted to the Government by the Working Group	6	0
IV.	Government responses	0	

Angola

Information reviewed and transmitted to the Government

94. The Working Group's activities in relation to Angola are recorded in its last 10 reports to the Commission. 1/

95. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of Angola of the seven outstanding cases transmitted in the past.

96. At the time of the adoption of the present report, no information had been received by the Working Group from the Government of Angola with regard to these cases. The Group is, therefore, still unable to report on the fate and whereabouts of the missing persons.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	7	1
III.	Total number of cases transmitted to the Government by the Working Group	7	1
IV.	Government responses	0	

Argentina

Information reviewed and transmitted to the Government

97. The Working Group's activities in relation to Argentina are recorded in its 13 previous reports to the Commission. 1/

98. During the period under review, the Working Group transmitted to the Government of Argentina one newly reported case of disappearance, which was reported to have occurred in 1993; the case was transmitted under the urgent action procedure on 3 November 1993.

99. By letter dated 22 January 1993, the Government was reminded of a report of one case of disappearance transmitted during the previous six months under the urgent action procedure. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases.

100. In a letter dated 20 October 1993, the Working Group informed the Government of allegations of a general nature which it had received concerning the phenomenon of disappearance in the country.

Information and views received from relatives of missing persons or from non-governmental organizations

101. The newly reported case of disappearance was submitted by Amnesty International and the International Union of Students and concerned the disappearance of a student after he reportedly filed a complaint against members of the police for abuse of authority.

102. In addition, reports on the human rights situation in the country were received from Amnesty International, the Grandmothers of the Plaza de Mayo, Relatives of Disappeared Persons and Persons Detained for Political Reasons, Mothers of the Plaza de Mayo (Línea Fundadora), Centre for Legal and Social Studies, Peace and Justice Service, the Permanent Assembly for Human Rights, the Argentine League for Human Rights and the American Association of Jurists.

103. The organizations referred to information previously submitted in 1991 concerning a claim against the Argentine Government filed in the administrative courts by relatives of persons who had disappeared between 1978 and 1983. The claim reportedly attributed legal responsibility to the Argentine Government on the grounds that the Government had not given the relatives of the victims effective remedies, since administrative and military officials had destroyed or concealed archives, documentation and other sources of information relating to the events which had led to the disappearance of the victims.

104. Non-governmental organizations further reported that the Argentine Government contested the claim, maintaining that it had no obligation to provide information or to keep the archives and documentation requested by the claimants and that, in the last instance, the Government had provided information "to the extent possible" in the "Final Report" of 28 April 1983.

105. In May 1993, the persons involved in the proceedings stated that since the claim was contested, a new fact (which had occurred after the claim had been filed) was constituted by the adoption by the United Nations General Assembly of the Declaration on the Protection of all Persons from Enforced Disappearance on 18 December 1992, in particular article 13, paragraph 6, which states that "An investigation ... should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified".

106. The Court reportedly informed the Argentine Government that the Declaration of 18 December 1992 had been invoked. On 6 May 1993, the Argentine Government is said to have objected to the inclusion of the Declaration in the proceedings, on the grounds that the Argentine State had already provided information on the fate of the disappeared persons "to the extent possible" in the military Government's "Final Report" of 28 April 1993, which stated that the disappeared persons were all dead, "even though the circumstances of the death and the whereabouts of the graves cannot be determined".

107. On 28 July 1993, the judge hearing the case reportedly handed down a ruling rejecting the Argentine Government's objection and stating that the Declaration by the General Assembly would be added to the file. This ruling is reportedly unappealable and the proceedings will now enter the phase of the submission of evidence.

108. According to the non-governmental organizations, the Government denies it has an obligation to provide information and claims that all documentation relating to disappeared persons was destroyed under the military Government. The organizations contest this claim, referring to a judgement by the Federal Court dated 12 May 1989 which reportedly ruled that, despite the proven destruction of files on disappeared persons that existed in the Ministry of the Interior, the "Ministry now has the information contained in those files, thanks to the microfilming of the index cards on each disappeared person".

109. The organizations claim that the Government of Argentina has information which it is withholding from the relatives of disappeared persons and that it is violating its obligations under the Declaration adopted by the General Assembly on 18 December 1992.

110. The Grandmothers of the Plaza de Mayo reported that they had located three children who were reported to have disappeared in 1977 (these cases were not submitted to the Working Group) and that, to date, they had succeeded in tracing 54 children.

111. The Working Group was informed that on 26 August 1993 the Special Rapporteur on summary or arbitrary executions had sent an urgent appeal to the Government of Argentina expressing concern for the physical integrity of Hebe de Bonafini, President of the Mothers of the Plaza de Mayo, who is alleged to have received death threats at her home in La Plata on 5 August 1993.

112. A letter was also received from a group of non-governmental organizations on the question of impunity.

Information and views provided by the Government

113. At its forty-first session, the Working Group met with a representative of the Argentine Government who informed the Working Group that the one case of disappearance transmitted to the Government this year, under the urgent action procedure, was currently being investigated by the police and judicial authorities in Argentina and that, should members of the police or any other State authority be responsible, they would be punished. He assured the Working Group that the Government of Argentina did not permit impunity for human rights violations.

114. In a note verbale dated 22 January 1993, the Government of Argentina provided comments on the general allegations contained in the Working Group's letter of 23 September 1992 and which were reflected in the Working Group's report to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/25). This note verbale referred to the policy followed by the democratic Government of Argentina during the last 10 years with respect to the tracing of persons who had disappeared under the military regime (1976-1983) and the bringing to justice of those who are responsible for those disappearances. The note verbale read as follows:

> "The Government of the Argentine Republic, which, upon the re-establishment of the rule of law, had to assume responsibility for determining the truth about the ultimate fate of those who disappeared under the military regimes from 1976 to 1983, have always been conscious of the debt that the State owes to the Argentine people. Similarly, the relatives of the victims of the repression are not unaware of the enormous difficulties that the Government has had to overcome in order to gather the very little evidence that exists on the subject.
>
> "The greatest effort to arrive at the truth was made in 1984 (when there were still some fresh traces of the crimes committed by the military dictatorship). That year, an exhaustive investigation was conducted by the National Commission on the Disappearance of Persons (CONADEP), whose findings were made available to national and international public opinion in a widely disseminated book, entitled Nunca Más (Never Again).

"On page 10 of the preface to the book, the Commission states:

> 'In grief and sorrow we have discharged the mission entrusted to us by the constitutional President of the Republic. It was made very difficult by the fact that we had to put together a jigsaw puzzle in the dark, many years after the events had occurred, after all of the traces had been deliberately erased, all of the documents burned and even buildings demolished. We therefore had to rely on the reports of the relatives, on the statements of those who managed to escape from the hell and even on the testimony of some of those involved in the repression who, for obscure reasons, approached us to tell us what they knew.'

"This statement is subsequently clarified extensively from pages 273 to 275, in section L, entitled 'Documentation', in chapter I, 'Repression', of the CONADEP report.

"Today, nine years after the restoration of democracy, the very institutions that confirmed these statements made in Nunca Más are persisting in a demand which has a legitimate basis but is misguided, because the country's present rulers come from the most repressed popular movement in the history of Argentina, with the largest number of victims during the period 1976 to 1983, and obviously cannot shed any light on that repression of which they themselves were victims.

"This paragraph of Annex I - Summary of general allegations received from non-governmental organizations and relatives of the missing persons - contains sweeping, not to say rash, statements and opinions concerning the present situation in Argentina.

"It is considered from two different angles:

"(a) Political considerations

"Any opinion on Argentina's human rights problems should be placed in the historical context which explains it and gives it meaning. The document under consideration should be seen against the background of recent events which reflect the enormous efforts made by the Argentine people and rulers to make improvements by creating the safeguards necessary to ensure the unconditional observance of human rights at the end of the last dictatorship.

"At the outset, it should be recalled that Dr. Raúl Alfonsín assumed leadership of the Government in December 1983 after eight years of de facto governments. Through his election, one demand came to the fore, which was that the penal mechanisms provided by a State governed by the rule of law should be reinstituted.

"The citizens regained control of the institutions of the Republic, but at a time of deep political, social and economic crisis and they had no choice but to live side by side in the State with representatives of a regime that had given its stamp of approval to impunity. Consequently, the civil authorities, bound by the legal constraints of a State subject

to the rule of law, which by definition gives full scope to pluralism and all kinds of power struggles, had to confront major political dilemmas whenever decisions were to be taken.

"The Alfonsín Government helped to ensure that formal standards and institutions took precedence over the operative rules and machinery of social conflict. The members of the judiciary - who had also occupied the same positions under the military regime - were made responsible for healing - in their own way - the wounds inflicted on Argentine society by the military governments. Consequently, when the time came to apportion blame, political concerns took second place to legal ones.

"But, in fact, the determining factor where justice was concerned proved to be the actual relationship between the political, economic and social forces.

"In 1983, the democratic Government was faced with a dilemma in the form of, on the one hand, the self-amnesty law that had been enacted by the last government of the dictatorship, and, on the other, the electoral campaign promise that the guilty would be tried and punished. It was thus torn between the claim to total impunity and a desire to apply the Penal Act to the fullest extent in order to punish the crimes committed by the political repression. That dilemma was not to be settled in the lawcourts alone.

"As early as January 1984, through a legislative amendment to the Code of Military Justice, the civilian Government had been obliged to resort to the expedient of having the persons responsible for State terrorism tried by the military courts, in an attempt to set in motion a purge of the armed forces from within, thereby sparing the incipient democracy traumatic situations later on. The prosecutions ordered by the President of the Nation in his capacity as Commander-in-Chief, based on the irrefutable evidence brought by CONADEP, led to attempted insubordination on the part of the leaders and to deliberate delays by the military courts designed to thwart the process of reconciliation.

"The cases had to be referred to the ordinary lawcourts: they were brought successively before the Federal Court of Appeals and the Supreme Court of Justice.

"Even before the trial of the commanding officers, it had become clear how far the prevailing political situation would allow opposing views to be reconciled and a firm and lasting peace to be built which would entail the unconditional application of justice.

"Subsequently, there were acts of insubordination and threats against the institutional order and disturbing expressions of disagreement among the officers of the armed forces which often had the approval of the spokesmen of the establishment, who then as now controlled the mass media and the mainsprings of economic power. The riots and armed rebellions came later, centring chiefly on Monte Caseros and Villa Martelli.

"The State was also subjected to pressure from the World Bank, which demanded solutions to the formidable external debt problem that the democratic regime had inherited from the administration of the dictatorship, while the national economic groups refused to submit to the discipline needed to execute the Government's internal adjustment programmes. This led to the so-called "golpes blancos" which triggered bursts of runaway inflation.

"The Punto Final (General Amnesty) and Obediencia Debida (Due Obedience) laws were enacted against this background of conflict. The first law granted a fixed-term amnesty to the soldiers who had not yet been tried; the second wiped out crimes committed by junior officers of all the armed and security forces whether they had been tried or not.

"The relationship between the social forces was such that it considerably lessened the possibility of imposing justice, and the people became less insistent in their demand, having become resigned to the need to avoid putting any pressure on the Government that might endanger democratic stability.

"The full price of peace and of the maintenance of the rule of law had not yet been paid when Raúl Alfonsín had to hand over the presidency to the newly elected Carlos Menem.

"Although justice continued to be a legitimate aspiration, along with suitable punishment for those found guilty of human rights violations, by the time the situation became settled the goals originally pursued had been considerably debased.

"The pardon granted to the commanding officers was an inevitable consequence of previous legal and political developments and grew out of the national and international context in which the Government was working, where the balance of social forces left no room for intransigence. Sorrowfully, the Peronists and indeed society as a whole accepted it, because they were aware of the difficulties involved in reconciling peace and justice after the bloody 'carapintada' (painted faces) uprising of 1990. In that situation, Dr. Menem, in the exercise of his leadership and of his constitutional powers, chose to establish priorities and to stem the conflict.

"The price to be paid for resolving a contradiction fraught with risks for the rule of law was, however, the lowest possible one: the President assumed sole responsibility for pardoning and releasing from prison the agents of repression who had been brought to justice and who remained guilty and convicted of their crimes.

"This short historical outline shows that the difficult transition from authoritarianism to the rule of law yields satisfactory results but also teaches bitter lessons. In order to preserve the democratic system it was often necessary to choose between undesirable options; peace-building meant that the maximum demands could not be met, however justified their principles may have been; victims and murderers had to make concessions in their claims so that a new order could be established. Since the hard-won consensus reached among the different parts of society grew out of the same objective conditions as have shaped

the relations between them, it ended up satisfying them only half way without fully responding to any of the conflicting interests.

"At the end of this whole period, society tried and convicted the chief architects of the criminal plan carried out between 1976 and 1983, although it was not able to prevent the crimes committed during this terrible period of Argentine history from going unpunished. This is the high price that has had to be paid for the opportunity to continue the longest democratic experiment of this last half-century.

"Today, because it is the will of the people and because the Government is determined to pursue the path of democracy, all the rights and guarantees that characterize the rule of law are applied in the country. When violations occur they are unlawful acts that are reported by the judiciary. Argentine society is making progress in building a human rights culture.

"(b) Legal considerations

"Despite the foregoing, a few legal considerations are to be noted. These concern the reasonableness of the demand that all those responsible for the crimes committed in Argentina between 1976 and 1983, when the military Juntas were in power, should be tried.

"That demand, which has clearly not been met at the present time, springs from a liberal outlook - inherent in the reasoning of the Unión Cívica Radical, whose platform is keyed more to matters of form than to any assessment of what might be feasible in the current situation.

"For Dr. Alfonsín's electoral campaign, the radical party formulated a political strategy in which its relationship with the outgoing Government turned essentially around the issue of legal punishment, and it gave more forceful expression to society's just claim that the guilty should be brought to trial, using it as a rhetorical device to distinguish itself from its chief opponent in the contest. When it emerged as the winner of the elections, the claim became a demand that actually had to be carried out.

"There were memorable popular demonstrations in support of the return to a State governed by the rule of law and they fuelled the hope of seeing those responsible for the bloody repression in the dock. There was thus heightened pressure on the democratic State to fulfil its election promises. The political authority was determined to settle the issue through the institutional remedy of criminal proceedings and tried to make good its promises by transferring responsibility to the judiciary, without yet purging it and without taking into account the practical limitations of the system of penal procedure. Its political pronouncements were still about the effectiveness of democracy in rigorously applying criminal laws, but in addition to the political obstacles described above, it met with difficulties in the technical implementation of the punitive mechanisms.

"As demonstrated by the evidence gathered by CONADEP in bringing the cases before the courts, the accused had, in their violations, committed virtually all the offences contained in the Penal Code. To

prosecute and investigate every one of the persons responsible in order to penalize those illegal acts would have meant scrutinizing every one of the armed institutions of the nation, all the security forces and virtually the whole of the civil service in its different divisions and echelons and conducting a judicial investigation of a virtually indeterminate number of suspects.

"In order to be consistent with the theory that the guilty should stand trial, it would have been necessary to place in an infinite number of docks the direct and indirect perpetrators and their necessary co-perpetrators and partners, accomplices and accessories. Within these categories, the weight of the law would have had to be brought to bear upon the majority of the officers and non-commissioned officers of the three armed and security forces, and even the recruits involved in the illegal acts. Furthermore, the investigations would have revealed the full extent of responsibility of thousands of civil servants in the central government, the prison, municipal and hospital administration, and of all the institutions that had been involved in the repression, in addition to thousands of civilian accessories. To have met the demand would have triggered chaos.

"The first step taken by the Government to avoid this was the enactment of the General Amnesty Law. Its effect was to stem the avalanche of complaints concerning all kinds of illegal acts, which threatened to obstruct the work that society wanted the judiciary to perform. In this way, the political authorities managed to extricate themselves from an awkward situation, but at a price: the objective limitations of the judicial system were exposed to view and it became clear that it was a mistake to make the criminal courts responsible for settling a political and social conflict.

"The other decision which paved the way for impunity was the Due Obedience Law. The mass of suspects was thus reduced to the commanding officers of the government Juntas, and a host of guilty persons were thus spared having to appear before the lawcourts.

"The trial of the nine commanding officers put an end to the idea that all those responsible should be punished. Reason and the bare facts showed that this was unreasonable and indeed physically impracticable. No one today can demand the impossible.

"It did not require extraordinary imagination to foresee the consequences of the election promise to have all the guilty tried and punished. But when the time came to carry it out, there was no escaping the conclusion that such a procedure was not feasible, with the result that the disappointment and discontent of the multitudes who had been living in the false hope of an unattainable utopia would not have been long in erupting.

"The demands of the Association of Grandmothers of the Plaza de Mayo outlined in this paragraph of the annex were duly heeded and a few days after the presidential audience referred to, the National Executive Authority created this Office of the Under-Secretary for Human Rights within the Ministry of the Interior, by virtue of Decree No. 1306/92. Item 6 of the list of its duties and functions authorizes the Office of

the Under-Secretary to 'assist in the coordination of the technical commission to be set up to expedite the search for missing children and to determine the whereabouts of children of known identity who have been kidnapped and have disappeared and of children born while their mothers were illegally deprived of their freedom ... '.

"The National Commission for the Right to an Identity commenced its work on 17 November of this year. It was set up within the framework of the official initiatives to fulfil the obligation contracted by the country when it ratified the Convention on the Rights of the Child by virtue of Act No. 23.849. The Commission's main purpose is to give effect to article 8 of the Convention which provides that 'Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity'.

"Two departments of the Government are engaged in this undertaking: the Ministry of the Interior through its Office of the Under-Secretary for Human Rights and the Office of the Attorney-General of the Nation, which has appointed two representatives of the Public Prosecutor's Department to the Commission: one prosecutor from the Supreme Court of Justice and another from the Office of the Adviser to the National Court of Appeals. Representatives of the Association of Grandmother of the Plaza de Mayo have a standing invitation to sit on the Commission and can consult all the registers and private documentation on the subject.

"The Office of the Under-Secretary for Human Rights in the Ministry of the Interior hopes, Sir, that with the submission of this report it has made a contribution to your work. Accept, Sir, the assurances of its highest consideration."

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	1	0
II.	Outstanding cases	3 386	750
III.	Total number of cases transmitted to the Government by the Working Group	3 462	771
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	2 947	
	(b) Cases clarified by the Government a/	43	8
V.	Cases clarified by non-governmental sources b/	33	13

a/ Persons arrested and released: 13
Children located: 19
Bodies located and identified: 11

b/ Persons released from detention: 7
Children located: 9
Bodies located and identified: 17

Bolivia

Information reviewed and transmitted to the Government

115. The Working Group's activities in relation to Bolivia are recorded in its 13 previous reports to the Commission. 1/

116. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases.

117. At the time of the adoption of the present report, no information had been received by the Working Group from the Government of Bolivia with regard to these cases. The Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

Information and views received from the Government

118. By a note verbale dated 7 April 1993, the Permanent Mission of Bolivia to the United Nations Office at Geneva requested the Working Group to provide it with the summaries of all outstanding cases. Copies of these summaries, in both the English and Spanish versions, were sent to the Government on 15 April 1993.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	-
II.	Outstanding cases	28	2
III.	Total number of cases transmitted to the Government by the Working Group	48	5
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	33	-
	(b) Cases clarified by the Government's responses a/	19	3
V.	Cases clarified by non-governmental sources b/	1	

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a/ Persons released from detention: 18
Persons officially reported dead: 1

b/ Persons released: 1

Brazil

Information reviewed and transmitted to the Government

119. The Working Group's activities in relation to Brazil are recorded in its last 12 reports to the Commission. 1/

120. During the period under review, the Working Group transmitted to the Government of Brazil two newly reported cases of disappearance, which reportedly occurred in 1993. The cases were transmitted under the urgent action procedure on 13 September and 11 October 1993.

121. By letter dated 22 January 1993, the Government was reminded of reports of disappearance transmitted during the previous six months under the urgent action procedure. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases transmitted in the past. By letter dated 3 December 1993, the Government was notified that one case was considered clarified on the basis of information provided by the source.

Information and views received from relatives of missing persons or from non-governmental organizations

122. Both of the newly reported cases of disappearance were submitted by Amnesty International. One case concerned a person reportedly detained by police of the Anti-Kidnapping Division of the Rio de Janeiro civil police, during a raid on a favela. The other case concerned the detention of a peasant in Para State during a police operation to arrest peasants suspected of involvement in the murder of a landowner and veterinarian. The latter case was clarified by the source, who reported that the subject had been released.

Information and views provided by the Government

123. By a note verbale dated 23 March 1993, the Permanent Mission of Brazil to the United Nations Office at Geneva transmitted the Brazilian Government's invitation to the Working Group to visit Brazil during the current year, in order to "evaluate *in situ* the work performed by forensic scientists in the States of Sao Paulo and Rio de Janeiro in order to identify the remains of missing persons, including political prisoners of the former military regime, as well as the disclosure of the archives of information and security organs for the purpose of elucidating outstanding cases of enforced or involuntary disappearances in Brazil".

124. By letter dated 21 May 1993, the Working Group expressed its appreciation to the Government for its invitation. However, in view of scheduling problems related to the Group's programme of activities and the availability of its members, as well as taking into account the financial constraints affecting the budget of the Centre for Human Rights, the Working Group felt that it would not be possible to carry out a visit to Brazil in the course of 1993.

125. By note verbale dated 2 July 1993, the Government informed the Working Group that in two cases of disappearance previously transmitted by the Group, an inquiry had been initiated by the Council for Defence of Human Rights, upon the instructions of the Ministry of Justice, and updated information had been requested from the Secretariat of Public Security of the State of Sao Paulo. By note verbale dated 18 November 1993, the Government informed the Working

Group that in one case of alleged disappearance the Secretary of Justice of the State of Rio de Janeiro had ordered the establishment of an inquiry by the General Police Inspector and, as a result, 22 policemen had been arrested. The case is now before the courts.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	2	-
II.	Outstanding cases	50	3
III.	Total number of cases transmitted to the Government by the Working Group	54	3
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	53	-
	(b) Cases clarified by the Government's responses a/	3	0
V.	Cases clarified by non-governmental sources b/	1	0

a/ Persons detained: 2
Persons whose remains have been found and identified: 1

b/ Released: 1

Bulgaria

126. The Working Group's activities in relation to Bulgaria are recorded in its previous report. No case of disappearance was reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of the three outstanding cases transmitted in the past.

127. At the time of the adoption of the present report, no information had been received by the Working Group from the Government of Bulgaria with regard to these cases. The Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	3	0
III.	Total number of cases transmitted to the Government by the Working Group	3	
IV.	Government responses	0	

Burkina Faso

Information reviewed and transmitted to the Government

128. The Working Group's activities in relation to Burkina Faso are recorded in its three previous reports to the Commission. 1/

129. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of the three outstanding cases transmitted in the past.

130. At the time of the adoption of the present report, no information had been received by the Working Group from the Government of Burkina Faso with regard to the three cases. The Working Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	3	0
III.	Total number of cases transmitted to the Government by the Working Group	3	0
IV.	Government responses	0	

Burundi

Information reviewed and transmitted to the Government

131. The Working Group's activity in relation to Burundi are recorded in its previous report to the Commission.

132. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of the 23 outstanding cases transmitted in the past.

Information and views provided by the Government

133. In a letter dated 11 May 1993, the Government stated that, because of the process of democratization presently taking place in the country including presidential and regional elections scheduled for June 1993, it was unable to submit any information or data on the cases of disappearance.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	23	0
III.	Total number of cases transmitted to the Government by the Working Group	23	0
IV.	Government responses	0	

Cameroon

134. The Working Group's activities in relation to Cameroon are recorded in its previous report to the Commission. 1/

135. No cases of disappearance were reported to have occurred in 1993. By letter dated 22 January 1993, the Government was reminded of reports of disappearances transmitted during the previous six months under the urgent action procedure. By letter dated 15 June 1993, the Working Group reminded the Government of the outstanding cases.

Information and views provided by the Government

136. By a note verbale received on 29 April 1993, the Government informed the Working Group that, following an investigation carried out by the Ministry of Defence, it had been found that the reported cases of disappearance were a political undertaking by the leaders of the Social Democratic Front (SDF) designed to tarnish the image of the country's national institutions.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	6	0
III.	Total number of cases transmitted to the Government by the Working Group	6	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	6	
	(b) Cases clarified by the Government's responses	0	
V.	Cases clarified by non-governmental sources	0	

Chad

Information reviewed and transmitted to the Government

137. The Working Group's activities in relation to Chad are recorded in its previous five reports to the Commission. 1/

138. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of the five outstanding cases. In a letter dated 20 October 1993, the Group informed the Government of allegations of a general nature which it had received concerning the phenomenon of disappearance in the country.

Information and views received from relatives of missing persons or from non-governmental organizations

139. The Group received reports of a general nature relating to disappearances from Amnesty International. They stated that since President Déby came to power in December 1990 more than 1,000 people had been arrested for political reasons and detained, usually for short periods, without trial. Among the 200 people who had been forcibly returned to Chad by the Nigerian authorities in early 1992, dozens of people had allegedly disappeared while being detained by security forces. Fears had been expressed that some victims of disappearance might have been killed at the security police headquarters in N'Djamena.

140. It was also alleged that the present Government had not taken into consideration the recommendations made in May 1992 by the Commission of Enquiry into human rights violations under President Hissein Habré's Government after a 17-month investigation, inter alia, that priority be given to the protection of human rights and the upholding of the rule of law, to the setting up of an independent judiciary system, and to the prosecuting of all those responsible for human rights violations.

Information and views received from the Government

141. By a note verbale dated 14 January 1993, the Government of Chad informed the Working Group that a Commission had been set up by decree No. 1157/PR/MJ/91 to inquire into cases of disappearances that had occurred in Chad. The Commission was ready to start work on identifying those responsible for the disappearances, who would be brought to court. It was, however, not yet known when the Commission would present its report.

142. The Working Group also received a reply from the Government of Chad concerning the tentative considerations formulated by the Working Group in relation to the question of impunity.

143. During its forty-first session the Working Group met with a representative of the Government of Chad, from the Embassy of the Republic of Chad in Paris. In his presentation, the representative emphasized that the process of democratization undergone by his country was only three years old: Chad was facing a major challenge in restoring peace and order in a country torn by 30 years of civil war and ethnic rivalries. Furthermore, 80 per cent of its population was illiterate.

144. A general amnesty had been proclaimed by the Government in 1992. About 40 political parties and two main trade union organizations had developed since then. After having ratified the International Covenant on Civil and Political Rights and the Convention against Torture, the Government of Chad was working at establishing a national commission on human rights.

145. The Government was also trying to contain tensions and the rebel activity of armed groups, especially in the south of the country, to restore national security and to develop a spirit of reconciliation for establishing the rule of law and respect for human rights. Reforms were also being implemented in the army and in the "gendarmerie".

146. A number of perpetrators of severe violations of human rights were currently being prosecuted under the judicial system, although in an inadequate manner owing to a strike which had affected for the last six months or so some of the judicial administrations concerned. It was in that context that the Government of Chad was still investigating the whereabouts of the five missing persons of concern to the Working Group. However, it was not yet in a position to say to whom the Inquiry Commission set up for the purpose would present its report.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	5	0
III.	Total number of cases transmitted to the Government by the Working Group	6	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	6	
	(b) Cases clarified by the Government's responses a/	1	0

a/ Person found dead: 1

Chile

Information reviewed and transmitted to the Government

147. The Working Group's activities in relation to Chile are recorded in its previous 13 reports to the Commission. 1/

148. No cases of disappearance were reported to have occurred in 1993. No further cases were transmitted by the Working Group to the Government of Chile during the period under review. By letter dated 15 June 1993, the Government was notified that one case was now considered clarified on the basis of information provided by the source indicating that the body of the missing person had been found in a common grave in Fundo San Juan. It also retransmitted one case to the Government, updated with new information from the source.

149. The Working Group proceeded to a complete revision of the cases of Chile, contained in its files. In doing so, some duplications were discovered, as well as a number of cases which had been transmitted to the Government

erroneously since, according to the source, the bodies had already been found and identified. The statistics, therefore, were adjusted and the new figures were communicated to the Government.

150. By letter dated 26 July 1993, the Working Group responded to questions posed by the Government in a letter dated 1 July 1993 regarding a citizen of the Dominican Republic who allegedly disappeared in Chile on 15 September 1973. The Working Group stated that it had searched all the files at its disposal and the name of the person in question had not been found. Still, it was possible that family members had contacted another United Nations body in regard to this case.

Information and views provided by the Government

151. By note verbale dated 1 July 1993, the Permanent Mission of Chile to the United Nations Office at Geneva inquired whether the Working Group could provide information regarding a citizen of the Dominican Republic alleged to have disappeared in Chile in September 1973. By letter of 10 August 1993, the Government responded that it concurred with the decision of the Working Group to consider clarified the case of Luis Onofre Saez Espinoza and that the Government agreed with the information updating another case in the Working Group's files. The Government also provided a list of names with the dates of disappearance and inquired if any information on these cases could be provided.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	905	68
III.	Total number of cases transmitted to the Government by the Working Group	912	68
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	12	
	(b) Cases clarified by the Government's responses a/	1	0
V.	Cases clarified by non-governmental sources b/	6	0

a/ Persons released: 1

b/ Persons released: 1
Persons dead (body found and identified): 5

China

Information reviewed and transmitted to the Government

152. The Working Group's activities in relation to China are recorded in its previous four reports to the Commission. 1/

153. During the period under review, the Working Group transmitted to the Government of China, by letter dated 15 June 1993, one newly reported case of disappearance which occurred in 1992. By the same letter, the Government was notified that four cases had been considered clarified on the basis of its replies. The Group also decided to retransmit to the Government one case containing additional information submitted by the source. In the same letter, the Working Group reminded the Government of all outstanding cases.

154. By letter dated 3 December 1993, the Working Group thanked the Government for the reply contained in its letters dated 29 September and 22 November 1993, and informed it that in five cases it had decided to apply the six-month rule.

Information and views received from relatives of missing persons or from non-governmental organizations

155. The newly reported case of disappearance was submitted by Asia Watch and was reported to have occurred in 1992.

Information and views received from the Government

156. By a letter dated 29 September 1993, the Permanent Mission of China to the United Nations Office at Geneva provided information on two cases of disappearances previously transmitted by the Working Group. Both missing persons were serving prison sentences for having taken part in illegal activities.

157. By note verbale dated 6 October 1993, the Government requested a copy of the outstanding cases.

158. The Working Group also received from the Government of China a reply relating to the application of the Declaration on the Protection of All Persons from Enforced Disappearances.

159. By note verbale dated 22 November 1993, the Government provided replies on 32 cases of disappearances previously transmitted by the working Group. It informed the Working Group that three missing persons had been released and were living at home; four had never been detained or arrested; one case was under special inquiry; and investigations carried out by judicial authorities had revealed that there existed no such person as one of the persons reported missing. In 23 cases, the Government reiterated the replies previously transmitted to the Working Group.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	32	1
III.	Total number of cases transmitted to the Government by the Working Group	47	4
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	46	
	(b) Cases clarified by the Government's responses a/	12	3
V.	Cases clarified by non-governmental sources b/	3	0

a/ Persons dead: 1
In prison: 1
Released: 5
Persons at liberty: 5

b/ Persons in prison: 2
Persons at liberty: 1

Colombia

Information reviewed and transmitted to the Government

160. The Working Group's activities in relation to Colombia are recorded in its previous eight reports to the Commission. 1/

161. During the period under review, the Working Group transmitted 25 newly reported cases of disappearance to the Government of Colombia, of which 15 were reported to have occurred in 1993; 16 of those cases were transmitted under the urgent action procedure (and 2 of them were clarified in 1993). The Group also retransmitted to the Government one case containing additional information submitted by the sources.

162. By letters dated 15 June, 20 October and 3 December 1993, the Government was notified that 10 cases were now considered clarified, 7 based on its replies and 3 on the basis of further information provided by the source.

The Government was also informed that in one case the Group had applied the six-month rule. By letters dated 22 January and 5 July 1993, the Government was reminded of reports of disappearance transmitted during the previous six months under the urgent action procedure. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases.

163. In a letter dated 20 October 1993, the Working Group informed the Government of allegations of a general nature it had received concerning the phenomenon of disappearance in the country or the solution of the cases not yet clarified.

Information and views received from relatives of missing persons or from non-governmental organizations

164. The majority of the newly reported cases of disappearance, and general information on the human rights situation in Colombia, were submitted by Amnesty International, the Association of Relatives of Disappeared Detainees (ASFADDES), the Justice and Peace Commission and the Andean Commission of Jurists. These organizations also provided information on the basis of which three cases have been considered clarified.

165. Fifteen of the cases transmitted were reported to have occurred in 1993, and 10 cases were reported to have occurred in 1992. The forces alleged to be responsible for the disappearances were the Armed Forces (12 cases), the police (seven cases), the Administrative Department for Security (one case) and armed men in civilian clothes believed to be linked to government forces (five cases).

166. According to information received, despite the fact that the 1991 Constitution is operative and State institutions have been established and reactivated in order to protect human rights, as in the case of the Defensoréa del Pueblo and the Office of the Attorney-General, the human rights situation in Colombia has not changed substantially as compared with 1992 and is still disturbing. Counter-insurgency and anti-narcotics operations, involving indiscriminate attacks that directly affect the civilian population, human rights violations by members of the Armed Forces and acts of violence by guerrilla or paramilitary groups are still common.

167. According to information received, the State of Internal Strife has not helped to improve the human rights situation. The Constitutional Court has declared that the numerous decrees issued by the Executive in exercise of its powers under the State of Strife are in conformity with the Constitution. This is the case with most of the provisions contained in Decree No. 1810 of 1992, whereby the Armed Forces are authorized to detain and investigate civilians at military units, in contravention of article 28 of the Constitution, under which "No one may be importuned in his/her person or family, sent to gaol or arrested, nor may his/her home be searched, except pursuant to a written order from a competent legal authority, subject to legal

process and for reasons previously established by law". According to information received, this situation makes for excesses against detainees by the Armed Forces that cannot always be kept in check.

168. Reports received also speak of apparent impunity in connection with cases of forcible disappearances in which State officials are implicated. Such impunity seems to be made easier by the following circumstances.

169. Both the previous Constitution and the 1991 Constitution establish a special military jurisdiction for members of the forces of law and order who, by act or omission, violate the law or the Constitution while on active service. It was reported that this jurisdiction is in practice ineffectual, for two basic reasons:

(a) The immediate superior of the person carrying out the order, in other words, the one involved in a human rights violation, is the Brigade Commander, who is at the same time a judge of first instance in the military courts, so that he is both the judge and the plaintiff;

(b) The military courts do not allow relatives to bring criminal indemnification proceedings in the trial, thereby making it impossible to submit evidence, object to the evidence produced or appeal against decisions. State officials who have been convicted of human rights violations are not normally dismissed but have been transferred and, in some instances, promoted. In addition, proceedings are initiated only in a few of the large number of complaints against State officials that reach the Office of the Attorney-General.

Information and views provided by the Government

170. In the course of 1993 the Government provided replies on five cases of disappearance by different notes verbales. In two cases the Government replied that an investigation was being carried out; in another two cases that the persons in question had been detained but were not missing; and in the fifth case that the person had requested the protection of the Army. The Government also sent a reply with respect to one case on which the Working Group had made a prompt intervention in 1992. According to the Government, the person in question had been given protection by the security forces since May 1993.

171. The Government also provided the Working Group with information about the draft bill in accordance with which it was intended to typify disappearance as a crime in the Colombian Penal Code.

172. The Government, furthermore, submitted its comments on the implementation of the Declaration on the Protection of all Persons from Enforced Disappearance.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	15	0
II.	Outstanding cases	700	61
III.	Total number of cases transmitted to the Government by the Working Group	895	76
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	665	-
	(b) Cases clarified by the Government's responses a/	150	9
V.	Cases clarified by non-governmental sources b/	45	6

a/ Persons at liberty: 37
Persons released: 61
Persons in prison: 11
Persons found dead: 39
Persons abducted by rebels: 1
Persons escaped: 1

b/ Persons at liberty: 3
Persons in prison: 5
Persons released: 22
Persons dead: 15

Cyprus

173. The Working Group's activities in relation to Cyprus are recorded in its 13 earlier reports to the Commission. 1/ As in the past, the Working Group continued to remain available to assist the United Nations Committee on Missing Persons in Cyprus, but was not so requested. The Working Group noted that in 1993 the Committee, whose activities were based mainly on the testimony of witnesses and investigations in the field, had held 9 sessions involving 32 meetings, during which it had continued to examine the reports presented to it by the investigative teams under the responsibility of each side.

174. The Working Group was informed that, on 4 October 1993, the Secretary-General wrote to the leaders of both communities and noted with regret that since his review of the work of the Committee of 31 May 1992 (S/24050) there had been no improvement. He emphasized to both leaders the need for a fresh commitment by both communities to the humanitarian objectives of the Committee. The Secretary-General reiterated the necessity of immediate progress in a number of areas, most particularly the submission of all cases of missing persons to the Committee for investigation and the urgent determination of agreed criteria for concluding its investigations. The Secretary-General has asked the Third Member to submit, by the end of January 1994, a full report on the situation at that time and on the basis of this report the Secretary-General intends to review the work of the Committee and to evaluate how far it merits the continued support of the United Nations. (See the report of the Secretary-General in connection with the Security Council's comprehensive reassessment of the United Nations peace-keeping force in Cyprus (S/26777) of 22 November 1993.)

Dominican Republic

Information reviewed and transmitted to the Government

175. The Working Group's activities in relation to the Dominican Republic are recorded in its previous eight reports to the Commission. 1/

176. No cases of disappearance were reported to have occurred in 1993. By a letter dated 15 June 1993, the Working Group informed the Government that it had decided to retransmit to it the one outstanding case, updated with new information from the source. It further stated that, in accordance with its methods of work, the reply from the Government dated 26 January 1993 was insufficient to allow the case to be considered clarified.

177. At the time of the adoption of the present report, no further information had been received from the Government and the Working Group is, therefore, still unable to report on the fate or whereabouts of the missing person.

Information and views received from relatives of missing persons or from non-governmental organizations

178. With regard to the one outstanding case, on 13 November 1993 the source informed the Working Group that the person had died in June 1984 as a result of police beatings and the body was allegedly buried in a common grave in the Cristo Rey cemetery. A police file on the case has reportedly not been made public. The source has transmitted this information to the local Institute for Investigation, Documentation and Human Rights for further investigation and in order for the family to be informed.

Information and views provided by the Government

179. By note verbale dated 26 January 1993, the Permanent Mission of the Dominican Republic to the United Nations Office at Geneva reiterated its reply dated 5 August 1985, stating that after an exhaustive research the Government could not locate this person.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	1	0
III.	Total number of cases transmitted to the Government by the Working Group	3	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	3	0
	(b) Cases clarified by the Government's responses a/	2	0
V.	Cases clarified by non-governmental sources	0	0

a/ Persons released from detention: 1
Persons living abroad: 1

Ecuador

Information reviewed and transmitted to the Government

180. The Working Group's activities in relation to Ecuador are recorded in its previous six reports to the Commission. 1/

181. No cases of disappearances were reported to have occurred in 1993. By a letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases.

182. At the time of the adoption of the present report, no information had been received by the Working Group from the Government of Ecuador with regard to these cases. The Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	6	0
III.	Total number of cases transmitted to the Government by the Working Group	17	1
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	16	0
	(b) Cases clarified by the Government's responses a/	9	1
V.	Cases clarified by non-governmental sources b/	2	0

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a/ Persons in prison: 2
Person arrested and extradited to Peru: 2
Persons dead: 3
Persons living abroad: 1
Persons escaped from detention: 1

b/ Bodies located and identified: 1
Persons at liberty: 1

Egypt

Information reviewed and transmitted to the Government

183. The activities of the Working Group in relation to Egypt are recorded in its six previous reports to the Commission. 1/

184. During the period under review the Working Group transmitted under the urgent action procedure one case of disappearance which allegedly occurred in 1993.

Information and views received from relatives of missing persons or from non-governmental organizations

185. The newly reported case of disappearance was submitted by Amnesty International and concerned an Egyptian national who was reportedly arrested at his place of work in the governorate of Aswan in May 1993, and whose whereabouts remain unknown.

Information and views received from the Government

186. By note verbale dated 7 July 1993, the Permanent Mission of Egypt to the United Nations Office at Geneva requested the Working Group to provide more details on the outstanding cases. This information was sent to the Government of Egypt on 23 July 1993.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	1	0
II.	Outstanding cases	5	0
III.	Total number of cases transmitted to the Government by the Working Group	7	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	2	0
	(b) Cases clarified by the Government's responses a/	2	0
V.	Cases clarified by non-governmental sources	0	

a/ Persons in prison: 2

El Salvador

Information reviewed and transmitted to the Government

187. The Working Group's activities in relation to El Salvador are recorded in its previous 13 reports to the Commission. 1/

188. No cases of disappearance were reported to have occurred in 1993. During the period under review, the Working Group transmitted to the Government of El Salvador 40 newly reported cases of disappearance which were reported to have occurred from 1980 to 1992.

189. By letter dated 15 June 1993, the Working Group transmitted to the Government one newly reported case which was reported to have occurred in October 1992 and reminded the Government of all outstanding cases.

190. In a letter dated 20 October 1993, the Working Group informed the Government of allegations of a general nature which it had received concerning the phenomenon of disappearances in El Salvador.

191. By letter dated 3 December 1993, the Working Group transmitted to the Government of El Salvador 39 newly reported cases of disappearance which were said to have occurred from 1980 to 1990. Since these cases were transmitted to the Government in December 1993, it must be understood, in accordance with the Working Group's methods of work, that the Government of El Salvador could not respond prior to the adoption of the present report.

Information and views received from the Independent Expert of the Commission on Human Rights, from the Human Rights Division of ONUSAL and from the Truth Commission

192. On the basis of the information received and the general opinion expressed in the course of his September 1992 and January 1993 visits to the country, the Independent Expert of the Commission on Human Rights, Mr. Pedro Nikken, pointed out that "at the present time, enforced or involuntary disappearances do not constitute a systematic practice in the country". The Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) recommended that simple, flexible mechanisms should be set up to enable complainants to ascertain the whereabouts of the persons concerned quickly (A/46/944-S/24375, annex, para. 950).

193. In his report to the Secretary-General, the General Assembly and the Security Council, the Director of the Human Rights Division of ONUSAL stated that no enforced disappearances had occurred during the period February-April 1993 and that that meant that the trend already noted during the period between June 1992 and January 1993 was continuing (A/47/968-S/26033, annex, para. 153).

194. On 15 March 1993, the United Nations-appointed Truth Commission (Comisión de la Verdad), published its report entitled: "From madness to hope" (De la locura a la esperanza), documenting massive human rights violations by Salvadorian Government forces during the civil war between 1980 and 1992, as well as abuses by the Farabundo Marti National Liberation Front (Frente Farabundo Marti para la Liberación Nacional). The Commission's report confirmed that the armed forces, security forces and paramilitary groups were responsible for enforced or involuntary disappearances, extrajudicial executions, massacres and torture on a massive scale. Many of the killings, it said, were preceded by disappearances.

Information and views received from relatives of missing persons or from non-governmental organizations

195. The newly reported cases of disappearance were submitted by the Archbishop's Legal Aid Office (Oficina de Tutela Legal del Arzobispado) and the Committee of Relatives of Victims of Human Rights Violations in El Salvador "Marianella Garcia Villas" (CODEFAM). These organizations and Americas Watch, Amnesty International, the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM), the Non-Governmental Commission on Human Rights of El Salvador (CDHES) and the

Writers in Prison Committee of International PEN, provided general information on the human rights situation in El Salvador and submitted to the Working Group reports on a number of issues relating to disappearances.

196. On 22 March 1993, the Legislative Assembly passed by majority vote the General Amnesty Law for the Consolidation of Peace. It was said by some non-governmental organizations that, in spite of official statements that the law was a necessary step towards national reconciliation, the speed and contents of the law showed that its main objective was to protect from prosecution all those responsible for carrying out or covering up human rights violations, specifically those mentioned by name in the Truth Commission's report.

197. It was further alleged that the General Amnesty Law would prevent any investigation to establish who was responsible for human rights violations committed in the context of internal conflict and to bring them to justice. It was argued that the Law violated article 244 of the Salvadorian Constitution, which relates to the non-applicability of amnesty to offences of officials during the presidential period within which they were committed. It was said that the General Amnesty Act was being interpreted and used to hinder the full implementation of the recommendations contained in the report of the Truth Commission.

198. Although there is no longer a pattern of enforced or involuntary disappearances in El Salvador, according to some non-governmental organizations, killings which could amount to extrajudicial or summary executions have been reported and the courts are still failing, for the most part, to carry out full investigations and identify those responsible. No investigations have been initiated into the cases of enforced or involuntary disappearances reported to the Working Group which were included in the appendix to the Truth Commission's report. It was pointed out that their relatives had at least the right to know where their loved ones were and to bury their dead with dignity.

199. It was also alleged that no special inquiry had been set up to establish the identity of the members of the "death squad" and bring them to justice, nor to identify "death squad" structures and ensure that they were dismantled, as recommended by the Truth Commission.

200. No action has been adopted to implement the Truth Commission's recommendation that "the State pay attention to the role of the intelligence services and the way this branch of government was exploited to identify individuals for disappearance or execution".

201. According to the same sources, during 1993 some killings have occurred in circumstances suggesting the victims were executed for political reasons and which bear the hallmark of the "death squads". In addition, there have been a number of other assassinations, also in "death squad" style, where the victim was clearly selected for execution even though the motive might not be clear. It was said that death threats by clandestine groups against political and other activists remained common, some of the threats being published in newspapers.

202. Lastly, some non-governmental organizations reported that no step had been taken to ensure that the judiciary was reformed into an independent and important body carrying out full and effective investigations into human rights violations and bringing those responsible to justice. Reports received by the Working Group have been particularly critical of the lack of independence of the judiciary, its failure to investigate human rights violations and the continuing pattern of impunity.

Information and views received from the Government

203. By letter dated 27 October 1993, the Permanent Mission of El Salvador to the United Nations Office at Geneva requested a copy of the resolution establishing the mandate of the Working Group. This was sent to the Government on 8 November 1993.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	2 259	262
III.	Total number of cases transmitted to the Government by the Working Group	2 638	323
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	520	-
	(b) Cases clarified by the Government's responses a/	318	49
V.	Cases clarified by non-governmental sources b/	61	12

a/ Persons dead: 4
Persons in prison: 160
Persons released from detention: 142
Persons at liberty: 5
Persons abducted by rebels: 1
Persons in court: 5
Persons in hospital: 1

b/ Persons dead: 10
Persons released from detention: 37
Persons at liberty: 5
Persons in prison: 9

Equatorial Guinea

204. During the period under review, the Working Group transmitted to the Government of Equatorial Guinea, by fax dated 25 August 1993, three cases of disappearance which reportedly occurred in 1993. The three cases were transmitted under the urgent action procedure.

205. The cases were received from Amnesty International and concerned three members of political opposition parties who had been arrested in Malabo, the capital of the country, on 9 and 10 August 1993. They were all taken to the central police station in Malabo. However, the police authorities have reportedly refused to disclose any information on the whereabouts of the persons concerned. All subsequent inquiries and appeals to the competent authorities by their relatives have been in vain.

206. At the time of the adoption of the present report, no information from the Government of Equatorial Guinea had been received by the Working Group with regard to these three cases.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	3	0
II.	Outstanding cases	3	0
III.	Total number of cases transmitted to the Government by the Working Group	3	0
IV.	Government responses	0	0

Ethiopia

Information reviewed and transmitted to the Government

207. The Working Group's activities in relation to Ethiopia are recorded in its previous 12 reports to the Commission. 1/

208. No cases of disappearance were reported to have occurred in 1993. By letter dated 22 January 1993, the Government was reminded of reports of disappearance transmitted during the previous six months under the urgent action procedure. By letter dated 15 June 1993, the Working Group reminded the Government of the 30 outstanding cases transmitted in the past.

Information and views received from the Government

209. By a note verbale dated 7 April 1993, the Transitional Government of Ethiopia provided information on two cases of disappearance previously transmitted by the Working Group, indicating that these persons had left the country.

210. The Working Group also received a reply from the Transitional Government of Ethiopia to its letter dated 27 July 1993 concerning the Declaration on the Protection of All Persons from Enforced Disappearance.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	30	2
III.	Total number of cases transmitted to the Government by the Working Group	30	2
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	2	
	(b) Cases clarified by the Government's responses	0	

Greece

211. The Working Group transmitted to the Government of Greece, by letter dated 20 October 1993, two cases of disappearance which reportedly occurred in 1993. The cases were submitted by Amnesty International and concerned two Albanian cousins who were allegedly detained by the police in Zagora. Although the Zagora police were said to have initially confirmed having detained the subjects, they were later reported to have denied doing so.

212. By note verbale dated 15 November 1993, the Government of Greece informed the Working Group that, following inquiries, it had been determined that the persons concerned had never been arrested by the police, and that the allegations about their arrest and detention were groundless.

213. By letter dated 3 December 1993, the Working Group thanked the Government for its reply, but informed it that in accordance with its methods of work that reply was considered insufficient to clarify the cases.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	2	0
II.	Outstanding cases	2	0
III.	Total number of cases transmitted to the Government by the Working Group	2	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	2	0
	(b) Cases clarified by the Government's responses	0	

Guatemala

Information reviewed and transmitted to the Government

214. The Working Group's activities in relation to Guatemala are recorded in its previous 12 reports to the Commission, 1/ as well as in the report on the visit to the country which took place in 1987 (E/CN.4/1988/19/Add.1).

215. During the period under review, the Working Group transmitted 10 newly reported cases of disappearance to the Government of Guatemala, 9 of which were transmitted by cable under the urgent action procedure. Seven of these cases reportedly occurred in 1993.

216. By letters dated 15 June and 3 December 1993, the Government was notified that two cases were now considered clarified, one on the basis of its reply and one on the basis of information provided by the source. By letter dated 15 June 1993, the Working Group transmitted one new case to the Government and reminded it of all the outstanding cases transmitted in the past.

217. By letters dated 22 January and 5 July 1993, the Government was reminded of reports of disappearance transmitted during the previous six months under the urgent action procedure.

218. In a letter dated 20 October 1993, the Working Group retransmitted one case to the Government, updated with additional information from the source. In the same letter, the Group informed the Government of allegations of a general nature which it had received concerning the phenomenon of disappearances in the country.

Information and views received from relatives of missing persons or from non-governmental organizations

219. The newly reported cases transmitted during 1993 were submitted by Amnesty International, Americas Watch, the Central American Association of Relatives of Disappeared Detainees (ACAFADE), the Guatemalan Commission for Human Rights (CDHG), the Human Rights Law Group and the Mutual Support Group (GAM). According to the sources, disappearances continued to occur in the departments of Santa Rosa, Suchitepequez, Guatemala City and Huehuetenango.

220. It has been reported that, although the overall number of disappearances in Guatemala during the last three years has steadily declined, there has been a corresponding increase in the number of extrajudicial executions reported to the Special Rapporteur on summary or arbitrary executions. According to information received by the Working Group, a recent change in the phenomenon of disappearances in Guatemala was evidenced by the fact that numerous persons who had disappeared were found dead within only hours or days. In addition, sources reported that the incidence of death threats had increased, particularly for human rights workers and relatives of victims of human rights violations. The Working Group was informed that for this reason fewer cases of disappearance were actually being reported.

221. It was reported that, in the course of the peace talks between the Government and the representatives of the armed opposition coalition, the "Unidad Revolucionaria Nacional Guatemalteca" (URNG), (Guatemalan National Revolutionary Unit), the Government had agreed that new civil self-defence patrols would not be established unless they were specifically requested by the civilian population. Nevertheless, in some of the cases received this year by the Working Group, the missing person had either resisted recruitment or had refused to carry out orders and had attempted to leave the patrol. Indigenous persons were the primary victims in these cases. In other cases of disappearance not related to civil-defence patrols, the victims have included agricultural workers trade unionists, small business persons and members of indigenous groups.

222. A new Code of Criminal Procedure became effective in 1993. Among the provisions cited as useful in the prevention or punishment of disappearances were those which provided the Attorney for Human Rights and the relatives of missing persons with special authority to conduct their own investigation into alleged cases of disappearance and arbitrary execution. According to information received by the Working Group, a generalized sense of fear and the conviction that the system remained inefficient kept relatives from attempting to make use of the legal apparatus said to be available in cases of disappearance.

Information and views provided by the Government

223. By note verbale dated 7 July 1993, the Permanent Mission of Guatemala to the United Nations Office at Geneva provided a reply on one specific case of disappearance. It reported that the case was under investigation by the Second District Court of Retlahuleu Department, for possible homicide.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	7	0
II.	Outstanding cases	3 006	377
III.	Total number of cases transmitted to the Government by the Working Group	3 138	395
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	154	
	(b) Cases clarified by the Government's responses a/	56	9
V.	Cases clarified by non-governmental sources b/	76	11

a/ Persons dead: 4
Persons in prison: 4
Persons released: 26
Persons not detained in the country: 1
Persons at liberty: 21

b/ Persons dead: 42
Persons in prison: 1
Persons released: 23
Persons at liberty: 10

Guinea

Information reviewed and transmitted to the Government

224. The Working Group's activities in relation to Guinea are recorded in its previous 10 reports to the Commission. 1/

225. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of Guinea of the 21 outstanding cases transmitted in the past.

226. At the time of the adoption of the present report, no information had been received from the Government of Guinea with regard to these cases. The Working Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	21	0
III.	Total number of cases transmitted to the Government by the Working Group	28	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	0	
	(b) Cases clarified by the Government's responses	0	
V.	Cases clarified by non-governmental sources a/	7	0

a/ Persons dead: 7

Haiti

Information reviewed and transmitted to the Government

227. The Working Group's activities in relation to Haiti are recorded in its previous 10 reports to the Commission. 1/

228. In the light of General Assembly resolution 46/7 of 11 October 1991, in which the Assembly affirmed as unacceptable any entity resulting from the illegal replacement of the constitutional President of Haiti and demanded the immediate restoration of the legitimate Government of President Aristide, the Working Group renewed its decision not to address its communications to the present de facto authorities of Haiti.

229. However, for humanitarian reasons, the Working Group transmitted, on 14 and 22 December 1992, five newly reported cases of disappearance under the urgent action procedure and one newly reported case to Mr. Francois Benoit, Port-au-Prince, Haiti. By fax dated 22 November 1993, the Group transmitted one newly reported case under the urgent action procedure, reported to have occurred in 1993. By fax dated 15 February 1993, Mr. Francois Benoit was reminded of reports of disappearance transmitted during the previous six months under the urgent action procedure. By letter dated 15 June 1993, the Working Group informed Mr. Benoit that one case was considered clarified on the basis of information provided by the source. In the same letter, the Working Group transmitted one newly reported case to Mr. Benoit and reminded him of the 30 outstanding cases transmitted in the past. So far, no information has been received by the Working Group on any of the above cases.

Information and views received from relatives of missing persons or from non-governmental organizations

230. The newly reported cases of disappearance were submitted by Amnesty International and the Lawyers Committee for Human Rights. The disappearances,

which occurred in Port-au-Prince, were allegedly committed by members of the Anti-Gang Investigation Service and armed men. Most of the victims were arrested in the presence of witnesses.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	1	
II.	Outstanding cases	30	0
III.	Total number of cases transmitted to the Government by the Working Group	40	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	13	0
	(b) Cases clarified by the Government's responses a/	9	0
V.	Cases clarified by non-governmental sources b/	1	0

a/ Persons at liberty: 4
Persons in prison: 5

b/ Body located and identified: 1

Honduras

Information reviewed and transmitted to the Government

231. The Working Group's activities in relation to Honduras are recorded in its previous 11 reports to the Commission. 1/

232. No cases of disappearance were reported to have occurred in 1993. In accordance with resolution 1993/64, the Working Group transmitted, on 6 May 1993, under the "prompt intervention procedure", a cable to the Government of Honduras concerning the harassment and intimidation of two persons from the Honduran Commission for Human Rights (Comisión de Derechos Humanos (CODEH)).

233. By letter dated 22 January 1993, the Government was reminded of reports of disappearance transmitted during the previous six months under the urgent action procedure. In a letter dated 15 June 1993, the Working Group reminded the Government of all the outstanding cases.

234. When verifying the total number of cases transmitted to the Government by the Working Group, it was discovered that two clarified cases were missing from the computer. The cases have now been re-entered and the statistics corrected.

Information and views received from relatives of missing persons or from non-governmental organizations

235. Information was received by the Working Group from the Commission for Human Rights (CODEH) regarding harassment and intimidation by the Government

of two of its members, reportedly because of their activities denouncing the situation of impunity in the country and calling for the creation of a technical police for criminal investigation.

Information and views provided by the Government

236. By note verbale dated 16 September 1993, the Government of Honduras provided a reply to the tentative considerations formulated by the Working Group on the question of impunity.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	126	20
III.	Total number of cases transmitted to the Government by the Working Group	193	33
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	123	-
	(b) Cases clarified by the Government's responses a/	30	6
V.	Cases clarified by non-governmental sources b/	37	7

a/ Persons found dead: 1
Persons in prison: 5
Persons living abroad: 2
Persons extradited: 2
Persons released: 18
Persons at liberty: 2

b/ Persons escaped from prison: 1
Persons dead: 5
Persons in prison: 4
Persons living abroad: 2
Persons extradited: 2
Persons released: 13
Persons at liberty: 10

India

237. The Working Group's activities in relation to India are recorded in its previous four reports to the Commission. 1/

238. During the period under review, the Working Group transmitted 45 newly reported cases of disappearance to the Government of India, of which 14 were reported to have occurred in 1993. Twenty of these cases were transmitted under the urgent action procedure.

239. By letters dated 22 January and 5 July 1993, the Government was reminded of reports of disappearance transmitted during the previous six months under the urgent action procedure. By letter dated 15 June, the Working Group transmitted 10 newly reported cases of disappearance to the Government. In one case it requested the Government to inform it whether the corpse of the person had been identified by a relative and whether a death certificate had been issued. It also reminded the Government of the outstanding cases transmitted in the past.

240. By letter dated 20 October 1993, the Working Group transmitted two newly reported cases of disappearance to the Government. It also informed the Government that, in accordance with its methods of work, one case was considered clarified, since there had been no observation from the source during the period of six months. In the same letter, the Working Group informed the Government of allegations of a general nature it had received concerning the phenomenon of disappearances in India.

241. By letter dated 3 December 1993, the Working Group transmitted 13 newly reported cases to the Government, and informed it that in six cases it had applied the six-month rule. As regards the 13 cases transmitted by the Working Group on 3 December 1993, in accordance with its methods of work, it should be understood that the Government could not have responded in the time available before the adoption of the present report.

Information and views received from relatives of missing persons or from non-governmental organizations

242. The newly reported cases of disappearance were submitted by Amnesty International, Human Rights Trust, the Sikh Human Rights Group and the International Human Rights Organization. These organizations reported that during 1993 most reported cases of disappearance took place in the Punjab region.

243. According to reports received, the phenomenon of disappearances in India has increased during the latest reporting period owing to the general situation of human rights throughout the country. The allegations transmitted to the Government by the Working Group related to cases which took place in the Punjab region. The forces named as being responsible are, primarily, the army and the police. The missing persons include persons suspected of belonging to separatist groups, members of trade unions, lawyers, judges, journalists and human rights workers. Many other allegations of disappearances reported to have occurred in Kashmir and Jammu were also received, but owing to the methods of work of the Working Group, which require

that all of the essential elements of the case be provided, these cases were not transmitted to the Government. It was reported to the Working Group that the situation in Kashmir and Jammu did not allow for a comprehensive compilation of information on cases, and that relatives of disappeared persons and human rights workers were often concerned about their own physical safety, in part because of harassment, threats or attacks often directed against them. For example, it was alleged that one human rights worker who had frequently represented the families of disappeared persons before the Jammu and Kashmir High Court, was extrajudicially executed in Srinagar at the end of 1992.

244. Two laws which have allowed for preventive detention were particularly cited as contributing to the conditions in which disappearances were likely to take place: the Terrorist and Disruptive Activities Act (TADA) and the Public Security Act (PSA). In addition to allowing for preventive detention, these laws allow for prolonged detention without the many other normal safeguards available under the criminal codes. The National Security Act (NSA) does not allow for preventive detention, but it has been used to detain persons for prolonged periods without trial. The Working Group has recognized that laws such as the TADA and PSA which allow for prolonged periods of detention without the accountability of the authorities create conditions in which disappearances are most likely to occur. Widespread torture, alleged to have occurred during periods of prolonged and incommunicado detention, was also reported to be an important element contributing to the phenomenon of disappearance. It was further noted that during these periods of detention women were particularly vulnerable to rape.

245. In regard to responsibility for human rights violations and in particular disappearances, it was reported to the Working Group that the police and other authorities acted with almost total impunity. Official investigations were reportedly rare and the Working Group was informed that the trial and conviction of authorities held responsible for such violations has occurred in approximately 1 per cent of all reported cases. Compensation to the victim or to the victim's family, most often without criminal prosecution, was reported to have been awarded in some cases.

Information and views received from the Government

246. By letter dated 7 January 1993, the Government of India informed the Working Group that in one case of disappearance the authorities had not detained the person concerned.

247. The Government of India also submitted its views on the implementation of the Declaration on the Protection of all Persons from Enforced Disappearance.

248. By letter dated 17 November 1993, the Government transmitted information to the Working Group concerning the newly constituted National Human Rights Commission. The Commission reportedly has wide ranging functions, which

include its ability to undertake inquiries either on petition or suo moto into complaints of human rights violations by public servants. The Commission was created pursuant to the Protection of Human Rights Ordinance 1993 issued on 28 September 1993, which provided for the constitution of the National Human Rights Commission, state human rights commissions and human rights courts. Details were provided on the functioning of these bodies.

249. By letters dated 25, 26 and 30 November 1993, the Permanent Mission of India to the United Nations Office at Geneva provided information on 36 cases of disappearances. In six cases the Working Group decided to apply the six-month rule, while the information provided on the 30 other cases was considered by the Working Group insufficient to constitute a clarification.

250. By letter dated 30 November 1993, the Permanent Mission of India to the United Nations Office at Geneva responded to the general allegations contained in the Working Group's letter of 20 October 1993. It was stressed that the Indian Constitution established all the relevant institutions to safeguard democracy, namely an independent judiciary, a parliamentary form of government, a free press and commitment to the rule of law. All actions of State officials were subject to judicial review. In particular, a magisterial inquiry was mandatory for deaths in custody, and by means of a "public interest litigation" any individual or group could bring instances of violations of human rights to the attention of the High Court and the Supreme Court.

251. This commitment to pluralist democracy and the rule of law was, however, confronted with terrorism. According to the Government, in the past decade, terrorist violence had taken a toll of about 12,000 lives in Punjab and 4,000 lives in Jammu and Kasmir, including nearly 2,000 policemen and security forces personnel. In addition, systematic religion-based extremism had resulted in an exodus of 250,000 persons from the Kashmir valley to other parts of India.

252. Against this background, special legislation such as the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Armed Forces (Special Power) Act had had to be enacted in so-called "disturbed" areas.

253. Nevertheless, the right to habeas corpus remained in force in all circumstances, and detainees always remained under judicial custody. There was thus no provision guaranteeing any form of impunity to security forces, and in Jammu and Kashmir alone, disciplinary action had been taken against 170 officers and men of the army and security forces. Custodial rape, if proven, could carry a life sentence.

254. According to the Government, the extrajudicial execution of a human rights worker, Mr. H.N. Wanchoo, in Srinagar on 5 December 1992, had been carried out by persons belonging to the terrorist organization Jamait-UV-Mujahideen, who had distorted these events to blame the authorities.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	14	0
II.	Outstanding cases	193	3
III.	Total number of cases transmitted to the Government by the Working Group	213	3
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	66	
	(b) Cases clarified by the Government's responses a/	19	0
V.	Cases clarified by non-governmental sources b/	1	

a/ Persons in prison: 3
Persons released: 2
Persons at liberty: 1
Persons whose bodies were identified: 13

b/ Persons in prison: 1

Indonesia

Information reviewed and transmitted to the Government

255. The Working Group's activities in relation to Indonesia are recorded in its 12 previous reports to the Commission. 1/

256. During the period under review, the Working Group transmitted 20 newly reported cases of disappearance to the Government of Indonesia, all of which were reported to have occurred in 1992; 17 of these cases were transmitted under the urgent action procedure. The Group also retransmitted to the Government a total of 13 cases containing observations on the Government replies submitted by the sources.

257. By letter dated 22 January 1993 the Government was reminded of reports of disappearances transmitted during the previous six months under the urgent action procedure. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases.

258. In a letter dated 10 November 1993, the Working Group informed the Government of allegations of a general nature it had received concerning the phenomenon of disappearance in the country.

259. By letter dated 3 December 1993, the Government was informed that in five cases the Group had applied the six-month rule.

Information and views received from relatives of missing persons or from non-governmental organizations

260. The majority of newly reported cases of disappearance were submitted by Amnesty International. Seventeen cases concerned persons who had reportedly been arrested in Dili, East Timor, without warrant and who were said to be held in incommunicado detention. Security officials had reportedly denied these detentions. The remaining three cases were reported to have occurred in Aceh.

261. Reports of a general nature on disappearances in Aceh and East Timor were received from several non-governmental organizations, including Amnesty International. In this connection it was reported that the Indonesian Government's counter-insurgency operations in East Timor and Aceh continued to entail disappearances at the hands of security forces personnel. This practice was also said to be used by the authorities as an instrument to deal with other perceived threats to national security, such as ordinary criminal activities and peaceful political opposition. Criticism was expressed about the alleged inadequacy of investigations into the unlawful killings and disappearances reported over the past few years. Thus, while it was recognized that the absolute number of reported political killings and disappearances in Aceh had declined substantially in the past year, concern was expressed that there had been no fundamental change in the conditions which allowed them to occur.

262. As regards the general pattern of disappearances in Aceh, it was alleged that suspects, sometimes the entire population of a village or neighbourhood, had been detained without warrant by military authorities. The relatives had not been told of the facts of the arrest or the place of detention. Family members inquiring about the whereabouts of a detainee had routinely been told that the person concerned was no longer in custody or had been transferred to another military camp or detention centre. Public registers of detainees had not been kept, and little effort had reportedly been made by military or police authorities to assist the family in locating the detainee. Some relatives are said to have themselves been subjected to interrogation or intimidation by the authorities.

263. It was further reported that Indonesia's Code of Criminal Procedure provided, in principle, significant guarantees against arbitrary arrests and detention. In practice, however, these legal provisions were allegedly frequently ignored by the authorities, thereby creating opportunities for the practice of unacknowledged detention and disappearances. Wherever the authorities deemed that there was a threat to national security or stability, the military, rather than the police, routinely carried out the arrest, detention and investigation. With few exceptions, arrest warrants were not issued, relatives were not informed, and detainees were held for extended periods without charges. Political suspects were generally held incommunicado and interrogated without the presence of a lawyer.

264. It was further reported that these practices were facilitated by exceptional legal provisions governing the arrest and detention of persons suspected of "subversion". The Anti-Subversion Law allowed for the administrative detention of alleged "subversives" for periods of one year, renewable indefinitely on the authority of the Attorney-General, without any other judicial authorization. Given the exceedingly vague definition of subversion contained in the Anti-Subversion Law, and the virtually unchallenged power of the military in matters relating to national security, this was reported effectively to allow military authorities unlimited powers of arrest.

265. With regard to the replies provided in 1992 by the Government of Indonesia concerning 13 cases of disappearance transmitted by the Working Group between 1980 and 1985, the source indicated that it considered that the Government replies failed to provide a full account of the fate and whereabouts of the missing persons.

Information and views received from the Government

266. By letter dated 28 December 1992, the Government of Indonesia requested a summary of the outstanding cases. This was sent on 20 January 1993.

267. By a letter dated 5 November 1993, the Permanent Mission of Indonesia to the United Nations Office at Geneva provided information on 20 cases of disappearance previously transmitted by the Working Group. The Government reported that in five cases the missing persons had returned home. In the remaining 15 cases, the names of the persons contained in the Government's reply did not correspond to the names of the missing persons contained in the lists of the Working Group.

268. By letter dated 30 November 1993, the Government of Indonesia responded to the general allegations contained in the Working Group's letter of 10 November 1993. In this connection, it stated, inter alia, that:

> "The Government of Indonesia is displeased that partisan observers have submitted reports to the United Nations on allegations of human rights violations in Indonesia which are one-sided, unsubstantiated and not supported by the facts. Moreover, the allegations are exaggerated and based only on second-hand sources whose reliability is questionable.
>
> "The Government of Indonesia could not lightly accept the accusations launched against it especially since these allegations picture Indonesia as a country without law and order. In this regard, the Government of Indonesia would like to reiterate that Indonesia is a State based on the rule of law, under which universal principles and values, including human rights and fundamental freedoms, as well as the due process of the law are highly respected and guaranteed by the State Philosophy and the 1945 Constitution.
>
> "With regard to actions/measures taken by the Indonesian law enforcement authorities, as in any other country, it is the duty of these authorities to take action, whenever disturbances occur which endanger the security of the country. Those measures are taken strictly in accordance with the

existing laws and regulations. In the case of members of the security apparatus who act in violation of the law, the Government of Indonesia is guided by the law which provides, among other measures, (a) the prosecution of a member of the security apparatus who violates the law by a civil court or military tribunal, or the imposition of an administrative sanction; (b) the right for the victim to file a complaint through a legal aid foundation.

"In addition, the Government of Indonesia continues to take necessary measures to improve the legal infrastructure to minimize the abuse of power through law enforcement."

269. With regard to the situation in East Timor, the Government of Indonesia stated:

"The allegation that 'counter-insurgency operations in East Timor have continued to entail disappearance at the hand of security forces personnel' is clearly unfounded. Contrary to the picture described by unreliable and biased reports, whereby the population in East Timor is gripped by 'fear and repression', the facts show that the situation in the Province is stable, the security under control, and the people going about their daily lives as normal, just as in other provinces of Indonesia.

"With regard to the military presence in East Timor, the Military Executive Operation Command (KOLALOPS) was officially dismantled on 30 April 1993, as public safety and stability in the Province have rapidly become established. Military activities now concentrate on a civic mission and are being conducted by the regular regional military command. As in other Indonesian provinces, the Armed Forces' civic mission is mainly intended to contribute to development related projects such as building irrigation systems, bridges, roads, schools and low-cost housing. By the year 1994, which is one year earlier than originally scheduled, the military presence in East Timor will be reduced to two battalions, which is the standard military presence to be found in any other province in Indonesia.

"As to the alleged missing persons, often the list of names submitted through the Working Group on Disappearances is exaggerated, inaccurate and with many important details missing, such as complete names and addresses. Notwithstanding, the Indonesian Government, with the assistance of local residents, local authorities, social institutions and community leaders, has done its utmost to clarify the whereabouts of those persons allegedly missing."

270. With regard to the situation in Aceh, the Government of Indonesia stated:

"The allegation of disappearances in Aceh as reported to the Working Group is clearly a fabrication, as there is no such thing as a 'general pattern of disappearances' in Aceh, even less so the detention of 'an entire population of a village or neighbourhood'.

"Regarding the disturbances in the Special Territory of Aceh which occurred in late 1989 and early 1990, the Government of Indonesia has given clarification to various United Nations bodies, including the Working Group on Disappearances.

"During the disturbances, a number of people were indeed killed; however, those killed were mostly among the rebels themselves. As far as civilian casualties are concerned, these deaths can for the most part be laid at the rebels' door, following attacks on villages and their ambushing of public transportation.

"Contrary to what has been alleged, the situation in Aceh is now generally stable and proofs of development are evident in many areas of the province. A slight disturbance did occur in late October when the police raided a 250 hectare cannabis plantation and confiscated 2.5 tons of dried cannabis. During the raid, Teungku Bantagiah, who is believed to be the leader of the syndicate, was arrested. Further investigation into the case is still taking place."

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	375	28
III.	Total number of cases transmitted to the Government by the Working Group	418	31
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	88	
	(b) Cases clarified by the Government's responses a/	31	2
V.	Cases clarified by non-governmental sources b/	12	1

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a/ Persons in prison: 6
Persons currently residing in named villages: 25

b/ Persons killed: 2
Persons in prison: 2
Persons found to be alive: 8

Iran (Islamic Republic of)

Information reviewed and transmitted to the Government

271. The Working Group's activities in relation to the Islamic Republic of Iran are recorded in its previous 11 reports to the Commission. 1/

272. During the period under review, the Working Group transmitted seven newly reported cases of disappearance to the Government of Iran.

273. By letter dated 15 June 1993, the Working Group transmitted to the Government one newly reported case, and reminded the Government of all outstanding cases. In the same letter, the Working Group informed the Government that at its thirty-ninth session it had decided to consider clarified the case of a person reported missing on the basis of information provided by the source. In accordance with the Working Group's methods of work, this case was deleted from the statistics concerning the Islamic Republic of Iran since the corpse of the missing person was located in Turkey. However, the case was forwarded by the Working Group to the Special Rapporteur on extrajudicial, summary or arbitrary executions of the Commission on Human Rights for his consideration.

274. In a letter dated 20 October 1993, the Working Group transmitted six newly reported cases of disappearance to the Government of Iran. In addition, the Working Group informed the Government of allegations of a general nature it had received concerning the phenomenon of disappearance in the country.

Information and views received from relatives of missing persons or from non-governmental organizations

275. The newly reported cases of disappearance were submitted by the People's Mojahedin Organization of Iran and by a relative.

276. Since its previous report to the Commission, the Working Group has continued to receive information from non-governmental organizations concerning the arrest of persons in circumstances which allegedly do not permit the relatives of the arrested person to be informed either of the arrest or of the person's subsequent whereabouts. It was reported that many such arrests were carried out arbitrarily, without the written authorization of the public prosecutor, by the State Security Police; the Police Force; the Gendarmerie; the Islamic Revolutionary Guards Corps (Pasdaran); the Islamic Revolutionary Committees (Komitehs); the Basijis; the Islamic Societies; the Political-ideological Bureau of the Armed Forces, and numerous street patrols, such as the patrol to combat improper veiling.

277. It was further reported that the Law of Judicial Support for the Basiji, adopted in December 1992, provides no redress against arbitrary detention by the Basiji. The Basiji organization, originally created during the Iran-Iraq war, was revived at the end of 1992, rearmed and sent out into the streets to help enforce Islamic law.

278. It was said that often an individual is arrested at home and told that he or she has to answer some questions which may require an absence of some hours, a period which, in practice, may extend to many months or even years in detention.

279. Furthermore, it was alleged that many relatives did not dare to seek information through official channels since the denunciation of the disappearance would put at risk the security of the person presenting the report. A tendency on behalf of the authorities to identify lawyers with their clients' causes and the lack of an independent bar association explained the reluctance of lawyers to denounce cases of disappearance.

280. It was also alleged that there was no limit to the length of time for which a person might be held in incommunicado detention, and that individuals might be kept thus without trial for many months. Under article 130 of the Code of Penal Procedure, the accused cannot communicate with his/her family or friends if contacts with other persons can lead to destruction of evidence or collusion with witnesses.

Information and views received from the Government

281. In a letter dated 10 February 1993, the Government provided information on the case of a disappearance transmitted by the Working Group on 15 December 1992, stating that they had no information indicating the whereabouts of the disappeared person and that any allegation as to the involvement of the Iranian forces in this disappearance was a fictitious claim and denied accordingly.

282. In a letter dated 13 October 1993, the Government provided information on the case of disappearance transmitted by the Working Group on 15 June 1993. The Government reported that, on the basis of a thorough investigation carried out by the authorities concerned, there was no record of the detention of this person, either in Qom nor in Evin prison in Tehran.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	505	121
III.	Total number of cases transmitted to the Government by the Working Group	506	121
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	266	-
	(b) Cases clarified by the Government's responses	0	
V.	Cases clarified by non-governmental sources a/	1	0

a/ Persons in prison: 1

Iraq

Information reviewed and transmitted to the Government

283. The Working Group's activities in relation to Iraq are recorded in its previous eight reports to the Commission. 1/

284. During the period under review, the Working Group transmitted, by letters dated 26 March, 15 June, 20 October and 3 December 1993, 1,360 newly reported cases of disappearance to the Government of Iraq, of which none were reported to have occurred in 1993. Of these cases, 1,105 were part of the estimated 2,000 cases which had been approved by the Working Group at its thirty-sixth session for transmission to the Government of Iraq, but, owing to a shortage of staff, still needed to be prepared at the end of 1992 (see E/CN.4/1993/25, para. 308). After careful examination of these cases, it was found that a considerable number lacked the detailed information required by the Working Group's methods of work. Consequently, only 1,105 of these cases were transmitted to the Government. As regards the cases transmitted by the Working Group on 3 December 1993, in accordance with its methods of work, it should be understood that the Government could not have responded in the time available before the adoption of the present report.

285. By letters dated 15 June and 3 December 1993, the Government was notified that 24 cases, to which the six-month rule had been applied, were considered clarified.

286. By letter dated 15 June 1993, The Working Group informed the Government that the information contained in its note verbale dated 16 February 1993 concerning 231 cases of disappearance was not considered sufficient to constitute a clarification of the whereabouts of the persons concerned. In the same letter, the Working Group informed the Government that it had also taken into consideration the latter's note verbale dated 21 April 1993, and it further reminded the Government of all outstanding cases.

287. In a letter dated 20 October 1993, the Working Group informed the Government of allegations of a general nature which it had received concerning the phenomenon of disappearances in the country.

288. With regard to the cases of disappearance which still await analysis and processing owing to insufficient human resources, it is to be noted that there is at present a backlog of well over 5,000 cases. A major part of these cases was submitted in January 1993 and concern the disappearance of thousands of Kurds in 1988. At its forty-first session, the Working Group decided to accept these cases; however, they would be transmitted to the Government during the course of 1994 and would only be counted in the Group's statistics once they had been transmitted.

289. By letter dated 20 November 1992, the Working Group communicated to the Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva two lists of names transliterated into the Arabic language of 373 missing persons. By letter dated 29 November 1993, the Working Group replied to the Government's request, contained in its note verbale of 29 October 1993, for the provision of names of missing persons transliterated into the Arabic

language. In this connection, the Working Group referred to its intention, expressed in its reply dated 24 July 1992, to "endeavour, in the interest of clarity, to make available, to the extent that it is possible, the names of missing persons in the Arabic language". The Working Group added, however, that owing to the financial crisis facing the Organization, which had also resulted in the backlog referred to above, it was currently not in a position to accede to the Government's request.

290. By letter dated 15 June 1993, the Working Group informed the Government of the corrected name in one case and the deletion from the statistics of two other cases because of duplication. By letter dated 3 December 1993, the Government was informed that an error, due to technical problems, had been identified in the total number of cases transmitted to the Government. The Working Group notified the Government that the statistics had been adjusted accordingly.

Information and views received from relatives of missing persons or from non-governmental organizations

291. The majority of the newly reported cases of disappearance were submitted by the Patriotic Union for Kurdistan, the Documental Centre for Human Rights in Iraq and the Gulf War Victims' Committee for Disappeared Ones.

292. The forces generally alleged to be responsible for the disappearances were security forces and other government forces of a military and/or intelligence nature. Victims included women, children and the elderly. Most disappearances occurred in the Kurdish northern region of the country or the predominantly Shi'a southern part of the country. It is also to be noted that a large percentage of the disappearances coincided with significant increases in the activities, including violent rebellion, of certain persons opposed to the present Government. However, other cases of disappearance appear to be unconnected to such occurrences.

293. In addition to the specific cases of disappearance submitted by the above-mentioned non-governmental organizations, the Working Group received general reports concerning the situation of human rights in Iraq, including the phenomenon of disappearance. The information was received from various sources including those submitting specific cases, such as the Organisation of Human Rights in Iraq, the Coalition for Justice in Iraq, the Organisation for Faili (Shi'a) Kurds, Amnesty International and Middle East Watch. Individual letters were also received from a variety of persons concerning the general situation which has given rise to disappearances. Further, refugees in Iran reported individual and general cases of disappearance in the southern marshes following arbitrary arrests.

294. To summarize these allegations, the Working Group has continued to receive reports and allegations of a general nature concerning the phenomenon of disappearance in Iraq several years ago, in the recent past and at present. A widespread fear of disappearance has also been reported in relation to arbitrary arrests by the army and security forces. In particular, the allegation has been made that the Government of Iraq sanctions this practice in so far as it grants considerable powers to its various security forces, does not impose meaningful judicial constraints on the activities of these

forces, and generally accords violators impunity for their actions. While such allegations were received in connection with what are claimed to be cases of arbitrary arrest and detention leading to disappearance as the result of government policies aimed at those of "Persian ancestry" in the early 1980s, against Kurds in the mid to late 1980s (especially in the context of the so-called "Anfal Operations" of 1988), and against accused "criminals" in the context of the March 1991 uprisings, reports from non-governmental organizations and individuals claim that a similar policy is at present resulting in the disappearance of many people from the southern marsh area of Iraq. In addition, it has been generally alleged that the Government of Iraq is responsible for the disappearance of several hundred Kuwaitis and third-country nationals who are said to have disappeared while in Iraqi custody during and subsequent to the Iraqi occupation of Kuwait.

Information and views received from the Government

295. By note verbale dated 16 February 1993, the Government stated, referring to the 231 cases of disappearance in the northern Kurdish region, that during the uprisings in that area in 1991 most of the official documents relating to the area had been damaged or lost. The Government also said that it was not in a position to verify the validity of any allegations, as the area referred to was outside the control of the central authority.

296. By note verbale dated 21 April 1993, the Government informed the Working Group that it had already replied to all the questions of the Working Group and that the Government had no further information. By note verbale dated 16 September 1993, the Government replied that it had no information on the cases transmitted by the Working Group on 15 June 1993.

297. In a note verbale dated 29 October 1993, the Government mentioned the difficulties it had in replying within short periods owing to communication problems as a result of the embargo imposed on Iraq, and the time-consuming work of investigating the allegations received. It further referred to difficulties of transliteration between Arabic and languages using the Latin alphabet and repeated its request that the names of disappeared persons be provided in the Arabic language.

298. The Government also submitted its views on the implementation of the Declaration on Enforced Disappearance.

299. Pursuant to Commission resolution 1993/48, the Government of Iraq sent a note verbale on 29 July 1993 in which it reported on violence and terrorist acts allegedly committed by armed Kurdish groups in the north and by Iranian armed groups reportedly collaborating with "Iraqi outlaws and deserters" in the south of the country. It was reported that in the north, especially after the Government had withdrawn from this region following the uprisings, armed Kurdish groups had taken control of the economic, civil and public institutions, confiscating their equipment in order to sell it in neighbouring countries. According to this information, they had also confiscated machinery from dams, thereby paralysing irrigation projects, had sold food rations intended for Kurdish citizens abroad, harassed the population and impeded their movement. Terrorist activities reportedly included the explosion of car bombs and the throwing of grenades. With regard to the situation in the

south, the Government reported that armed groups had killed numerous officials and civilians, destroyed and looted economic and civil institutions, as well as food warehouses, and circulated false banknotes in the country.

Statistical summary

		Total	Females*
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	10 446	254
III.	Total number of cases transmitted to the Government by the Working Group	10 570	274
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	475	-
	(b) Cases clarified by the Government's responses a/	107	14
V.	Cases clarified by non-governmental sources b/	17	6

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* The number of female cases is not an accurate reflection of all female cases, since it was not always possible to distinguish between male and female victims.

a/ Persons living abroad: 3
Persons in prison: 3
Persons released from detention: 28
Persons executed: 10
Persons at liberty: 54
Persons not detained in the country: 3
Persons dead: 6

b/ Persons executed: 4
Persons released from detention: 4
Persons dead: 1
Persons at liberty: 8

Israel

Information reviewed and transmitted to the Government

300. The Working Group's activities in relation to Israel are recorded in its previous report to the Commission. 1/

301. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of Israel of the one outstanding case transmitted in the past. By letter dated 20 October 1993, the Working Group retransmitted the case to the Government, updated with new information from the source.

Information and views received from the Government

302. By letter dated 17 November 1993, the Government of Israel informed the Working Group that efforts made to locate the whereabouts of the one outstanding case of disappearance had not yet led to any results. Further information was required regarding the identity and the address of the missing person.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	1	0
III.	Total number of cases transmitted to the Government by the Working Group	1	0
IV.	Government responses	1	

Kuwait

303. During the period under review, the Working Group transmitted one case of disappearance to the Government of Kuwait by letter dated 15 June 1993. The case was submitted by a relative of the missing person and concerned an individual of Palestinian origin who was reported to have disappeared in 1991 in the aftermath of the occupation of Kuwait by Iraqi forces.

304. By letter dated 20 October 1993, the Working Group expressed its appreciation to the Government of Kuwait for its reply dated 26 August 1993, and informed it that in accordance with the Group's methods of work, however, it was considered insufficient to clarify the outstanding case.

Information and views received from the Government

305. By letter dated 26 August 1993, the Permanent Mission of Kuwait to the United Nations Office at Geneva informed the Working Group that the competent

authorities had no record of the disappearance of the person concerned. The Government stated that the "legitimate" Government had not yet succeeded in regaining full control of the country during the first months following the liberation of Kuwait, when the alleged disappearance took place.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	0
II.	Outstanding cases	1	0
III.	Total number of cases transmitted to the Government by the Working Group	1	0
IV.	Government responses	1	

Lebanon

Information reviewed and transmitted to the Government

306. The Working Group's activities in relation to Lebanon are recorded in its previous 10 reports to the Commission. 1/

307. No cases of disappearance were reported to have occurred in 1993. By letter dated 10 June 1993, the Working Group reminded the Government of Lebanon of its obligation to do its utmost in order to elucidate the 243 cases of disappearance transmitted to it in the past. Reference was made to article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, which states that "No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances". The only cases excluded by the Working Group are those which occur in the context of an international armed conflict. The Working Group requested the Government of Lebanon to do its utmost to investigate the 243 cases of disappearance and to submit to it further information on these cases.

Information and views received from the Government

308. By a note verbale dated 23 February 1993, the Permanent Mission of Lebanon to the United Nations Office at Geneva informed the Working Group that the Government had undertaken, but in vain, investigations regarding the 243 cases of disappearance transmitted by the Group. It wished to draw the Working Group's attention to the fact that the Lebanese authorities were not in control of the regions of the country where these disappearances had occurred, because of the state of war in the country. By note verbale dated 27 May 1993, the Government stated that it had no further information on these cases.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	243	13
III.	Total number of cases transmitted to the Government by the Working Group	248	13
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	0	
	(b) Cases clarified by the Government's responses	0	0
V.	Cases clarified by non-governmental sources a/	5	0

a/ Persons released: 5

Mauritania

Information reviewed and transmitted to the Government

309. The Working Group's activities in relation to Mauritania are recorded in its previous three reports to the Commission. 1/

310. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of the one outstanding case transmitted in the past.

311. At the time of the adoption of the present report, no information had been received by the Working Group from the Government of Mauritania with regard to this case. The Group is, therefore, still unable to report on the fate or whereabouts of the missing person.

312. The Working Group also received a reply from the Government of Mauritania concerning the tentative considerations formulated by the Working Group in relation to the question of impunity.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	1	0
III.	Total number of cases transmitted to the Government by the Working Group	1	0
IV.	Government responses	0	

Mexico

Information reviewed and transmitted to the Government

313. The Working Group's activities in relation to Mexico are recorded in its second and fourth to thirteenth reports to the Commission. 1/

314. During the period under review, no cases of disappearances were transmitted to the Government of Mexico. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases.

315. By letter dated 3 December 1993, the Working Group retransmitted 74 cases to the Government, updated with new information from the source, and advised the Government that in 4 cases it had decided to apply the six-month rule.

Information and views received from relatives of missing persons or from non-governmental organizations

316. The Working Group received updated information on cases that had occurred in the past from the Independent National Committee for the Defence of Prisoners, Persecuted and Missing Persons and Political Exiles. The organization stated that many cases of disappearances which had occurred in previous years had not been properly investigated, so that the fate of the missing persons was still unknown and those responsible for such crimes had not been brought to justice. It also reported that many of these disappearances had occurred during a period of widespread violence and many victims were members of "The Party of the Poor" and "The September 23 Communist League". The relatives of many victims had never received a reply from the Government. In other cases, they could not accept the government reply because it reflected the results of investigations which had neither a legal nor factual basis.

Information and views received from the Government

317. During its thirty-ninth and fortieth sessions, the Working Group met with the Director-General of the Executive Secretariat and the Coordinator for the Alleged Disappearances Programme of the Mexican National Commission for Human Rights, who gave an account of the National Commission's activities and explained how it had succeeded in clarifying a number of cases. They stated that with the coming into effect of the Law on the National Commission on 30 June 1992, as well as its Internal Regulations on 12 December 1992, the legal statute of the National Commission for Human Rights was totally renovated. Through the Ministry for Foreign Affairs, information had continued to be sent to the Working Group on the course of investigations conducted by the National Commission. A general report on the Alleged Disappearances Programme of the National Commission was presented to the Working Group, setting forth the results obtained and the problems and difficulties faced during the investigations.

318. The representatives of the National Commission stated that of the 210 outstanding cases transmitted to the Government of Mexico by the Working Group, 98 corresponded to the "guerrilla" warfare phenomenon, with frequent clashes between armed organizations and the armed forces in the mountainous part of the State of Guerrero. The National Commission had

requested reports on these cases from federal and state authorities, decentralized organizations and private entities, without obtaining positive results.

319. In nine other cases, the National Commission considered that the complaints did not contain the basic elements for seriously considering a missing person's case. In 19 other cases, the National Commission stated that it had no documentation to allow it to conduct an investigation and requested the Working Group to ask the relatives for further information. In three other cases, in which the relatives had not accepted the results of the National Commission's investigations, the latter requested the Working Group to contact the relatives and ask if they accepted the National Commission's conclusion and, if not, to provide proof to the contrary.

320. The National Commission also requested the Working Group to consider six cases as clarified. In one case, their investigations had led to the determination that the missing person died as a result of drowning in the Rio Bravo. In another case, the subject was presumed the victim of a highway accident which provoked an explosion and a fire in the vehicle in which he was. In the other four cases, the relatives had declared to the National Commission their wish to abandon the complaints for various reasons, although the National Commission's investigations had been unable to determine the whereabouts of the missing persons. The Working Group considered these cases at its forty-first session. In two of the cases, the Working Group decided that the information provided was insufficient to clarify the cases in accordance with its methods of work. In four cases, it decided to apply the six month-rule.

Statistical summary	Total	Females
I. Cases reported to have occurred in 1993	0	
II. Outstanding cases	210	16
III. Total number of cases transmitted to the Government by the Working Group	258	18
IV. Government responses		
(a) Number of cases on which the Government has provided one or more specific responses	226	
(b) Cases clarified by the Government's responses a/	47	2
V. Cases clarified by non-governmental sources b/	1	0

a/ Persons reported dead: 38
Persons at liberty: 8
Persons released from detention: 1

b/ Persons in prison: 1

Morocco

Information reviewed and transmitted to the Government

321. The Working Group's activities in relation to Morocco are recorded in its previous 11 reports to the Commission. 1/

322. No cases of disappearance were reported to have occurred in 1993. During the period under review, the Working Group transmitted one newly reported case of disappearance to the Government by letter dated 3 December 1993. It also retransmitted one case updated with new information from the source to the Government of Morocco, by letter dated 20 October 1993. As regards the new case transmitted on 3 December 1993, in accordance with the methods of work of the Working Group, it should be understood that the Government could not have responded in the time available prior to the adoption of the present report.

323. By letter dated 15 June 1993, the Working Group clarified to the Government of Morocco that of the 204 cases transmitted in the past for which no information had been provided by the Government, at least 102 cases were recent ones, forwarded to the Government on 28 June 1990 (65 cases), 20 September 1990 (24 cases) and 18 September 1991 (13 cases). These cases were not then to be considered for the nine-year period mentioned in the report submitted by the Working Group to the Commission on Human Rights at its previous session (E/CN.4/1993/25).

324. In the same letter, the Working Group also indicated that the use of the word "déserteurs" in paragraph 351 of the above-mentioned report was inappropriate to describe the Saharans who had left the detention camps of the Polisario Front. The words originally used by the source had been "transfuges sahraouis". In accordance with its methods of work, the Working Group was only reflecting information received from sources without identifying itself with the words used by them. For both the matters referred to above, the Working Group apologized to the Government of Morocco.

325. Regarding the question of the Saharan cases of disappearance, the Working Group indicated in the same letter that it had undertaken a thorough comparison of the lists of names transmitted by the Moroccan Government on 3 December 1991 with those in the hands of the Group. So far, none of the names appearing on the lists of the Working Group corresponded to those submitted by the Government. The problem might be due to the fact that the Government's list may have been drawn from an Arabic transliteration, whereas the lists submitted to the Working Group may have been drafted in the Saharan language (Hassinia).

326. Finally, the Working Group reminded the Moroccan Government of the 204 outstanding cases.

Information and views received from relatives of missing persons or from non-governmental organizations

327. The newly reported case of disappearance transmitted to the Government in 1993 was submitted by the International Law Group on Human Rights, the Association de Défense des Droits de l'Homme au Maroc and Amnesty

International. It concerned the case of a trade unionist allegedly sentenced to death in absentia in 1971 for having plotted against the security of the State, and who was reportedly abducted by government agents in 1972 while in Tunis. He was allegedly brought back to Rabat where he was detained incommunicado in a villa and other places after a failed attempt to escape in 1975.

328. According to the information received by the Working Group, many families of the disappeared were still pursuing their inquiries with the Moroccan authorities and detention centres. It was allegedly believed that a number of missing persons had been held in secret villas in Rabat, before being transferred to detention camps like Tazmamert, Qal'at M'gouna, Agdz and Laayoune.

329. Moroccan security services were reportedly believed to have taken an active part in disappearances, most of the time through secret services reporting directly to the King and the Ministry of the Interior.

Information and views received from the Government

330. In a note verbale dated 25 February 1993, the Permanent Mission of Morocco to the United Nations Office at Geneva raised its concerns in relation to the 204 cases of disappearance concerning which the Working Group had received no information in nine years. The Government wished to draw the attention of the Group to the fact that the initial allegations concerning the disappearance of Saharans were only transmitted to the Government in June 1990, while subsequent allegations were received in September 1990 and in April 1991. In regard to the wording of paragraph 351 of the previous year's report submitted by the Working Group to the Commission on Human Rights, the Government wished to indicate that the word "deserters" used to identify Saharan people who had left the detention camps of the Polisario Front was not only pejorative, but also violated the very fundamental right of everyone to leave any country, including his own, and to return to his country.

331. In another note verbale, dated 11 May 1993, the Mission indicated that all the 276 detained Saharan people on the lists communicated to the Working Group had been liberated in June 1991, following the royal pardon granted to them at the request of the Consultative Council of Saharan Affairs. However, the thorough investigations carried out by the competent Moroccan authorities to locate the whereabouts of the missing people had remained in vain. As far as the lists provided by the Working Group were concerned, they did not contain enough information about the names of the missing persons, their date and place of birth, the social group to which they belonged, or the date and place of arrest.

332. The Mission also emphasized the fact that because of the nomadic character of the population living in the region, a number of the missing persons might have settled in neighbouring countries. These lists also included people who had disappeared in the Sahara, before Morocco exercised its sovereignty over this territory. Some of the missing persons might also have been killed during the hostilities which took place in the region or while they were held in the detention camps of Tindouf. The credibility of

the lists provided by the Working Group could be challenged in view of the links that the sources of information had with the enemies of Moroccan territorial integrity.

333. In the same note verbale, the Mission declared that the allegations concerning the existence of secret detention centres where missing persons might be held were only rumours aimed at disparaging Morocco.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	205	26
III.	Total number of cases transmitted to the Government by the Working Group	231	28
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	1	-
	(b) Cases clarified by the Government's responses	0	
V.	Cases clarified by non-governmental sources a/	26	29

a/ Persons dead: 4
Persons released: 22

Mozambique

Information reviewed and transmitted to the Government

334. The Working Group's activities in relation to Mozambique are recorded in its previous five reports to the Commission. 1/

335. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of Mozambique of the one case transmitted in the past.

336. At the time of the adoption of the present report, no information had been received by the Working Group from the Government of Mozambique with regard to this case. The Group is, therefore, still unable to report on the fate or whereabouts of the missing person.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	1	0
III.	Total number of cases transmitted to the Government by the Working Group	1	0
IV.	Government responses		

Nepal

Information reviewed and transmitted to the Government

337. The Working Group's activities in relation to Nepal are recorded in its previous six reports to the Commission. 1/

338. During the period under review, the Working Group transmitted to the Government of Nepal, by letter dated 3 December 1993, one case of enforced or involuntary disappearance, which reportedly occurred in 1993. Since the case was transmitted to the Government in December 1993, it must be understood, in accordance with the methods of work, that the Government of Nepal could not respond prior to the adoption of the present report.

339. By letter dated 15 June 1993, the Working Group reminded the Government of Nepal of the outstanding cases transmitted in the past.

Information and views received from relatives of missing persons or from non-governmental organizations

340. The newly reported case was submitted by Amnesty International and concerned the disappearance of a student in Kathmandu.

Information and views received from the Government

341. By letter dated 12 August 1993, the Government submitted a reply in connection with the cases of disappearance transmitted to it. It informed the Working Group that, despite its efforts, the whereabouts of the persons concerned could still not be determined.

342. By letter dated 23 September 1993, the Government submitted its views on the implementation of the provisions of the Declaration on enforced disappearance.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	1	0
II.	Outstanding cases	5	0
III.	Total number of cases transmitted to the Government by the Working Group	6	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	4	0
	(b) Cases clarified by the Government's responses a/	1	0

a/ Person released: 1

Nicaragua

Information reviewed and transmitted to the Government

343. The Working Group's activities in relation to Nicaragua are recorded in its 13 previous reports to the Commission. 1/

344. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases.

345. At the time of the adoption of the present report, no further information had been received by the Working Group from the Government of Nicaragua with regard to the outstanding cases. The Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

Information and views received from relatives of missing persons or from non-governmental organizations

346. The Nicaraguan Association for Human Rights (Asociación Nicaraguense Pro-Derechos Humanos) provided its views on the obstacles encountered in the implementation of the Declaration on enforced disappearance.

347. The Centro Nicaraguense de Derechos Humanos, pursuant to resolution 1993/48 on the consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population by drug traffickers, submitted information to the Working Group on the violation of the right to life of 705 Nicaraguans by irregular armed groups.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	101	2
III.	Total number of cases transmitted to the Government by the Working Group	232	4
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	175	
	(b) Cases clarified by the Government's responses a/	112	2
V.	Cases clarified by non-governmental sources b/	19	0

a/ Persons in prison: 7
Persons dead: 64
Persons at liberty: 16
Persons who joined counter-revolutionary forces: 12
Persons abducted by counter-revolutionary forces: 2
Salvadorian fishermen not detained in the country: 11

b/ Persons who died in armed confrontations: 11
Persons at liberty: 4
Persons in prison: 2
Persons living abroad: 1
Persons who joined a rebel group: 1

Nigeria

Information reviewed and transmitted to the Government

348. The Working Group's activities in relation to Nigeria are recorded in its previous report to the Commission.

349. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases. By letter dated 20 October 1993, the Working Group informed the Government that in the three outstanding cases, the Group had applied the six-month rule.

Information and views provided by the Government

350. By notes verbales dated 27 July and 3 November 1993, the Permanent Mission of Nigeria to the United Nations Office at Geneva provided information on cases of disappearance previously transmitted by the Working Group, indicating that the three missing persons had been arrested by the Nigerian police after what was termed in Nigeria the "May 1992 riots" against the structural adjustment measures, but all three had since been released.

351. In another note verbale, dated 3 November 1993, the Government submitted its views on the implementation of the Declaration on enforced disappearances.

352. During its forty-first session, the Working Group met with a delegation from the Permanent Mission of Nigeria to the United Nations Office at Geneva, which provided further information on the three outstanding cases transmitted by the Working Group.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	3	0
III.	Total number of cases transmitted to the Government by the Working Group	3	0
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	3	0
	(b) Cases clarified by the Government's responses	0	
V.	Cases clarified by non-governmental sources	0	

Pakistan

Information reviewed and transmitted to the Government

353. The Working Group's activities in relation to Pakistan are recorded in its four previous reports to the Commission. 1/

354. During the period under review, the Working Group transmitted one newly reported case of disappearance to the Government of Pakistan, by letter dated 20 October 1993.

355. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases transmitted in the past.

Information and views received from relatives of missing persons or from non-governmental organizations

356. The newly reported case of disappearance was submitted by Amnesty International and concerned a customs inspector who disappeared in the custody of the army in 1992. The subject's family filed a petition in the High Court of Siddhi, which reportedly urged the Home Secretary of the provincial government of Sindh to investigate his whereabouts. Reportedly, no such investigation had taken place.

Information and views received from the Government

357. The Working Group received a reply from the Government of Pakistan to its letter dated 27 July 1993 concerning the Declaration on the Protection of All Persons from Enforced Disappearances.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	16	0
III.	Total number of cases transmitted to the Government by the Working Group	16	0
IV.	Government responses	1	

Paraguay

Information reviewed and transmitted to the Government

358. The Working Group's activities in relation to Paraguay are recorded in its previous 11 reports to the Commission. 1/

359. No cases of disappearance were reported to have occurred in 1993. By letter dated 15 June 1993, the Working Group reminded the Government of the three outstanding cases.

360. At the time of the adoption of the present report, no information had been received from the Government of Paraguay with regard to these cases. The Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

Statistical summary

		Total	Females
I.	Cases reported to have occurred in 1993	0	
II.	Outstanding cases	3	0
III.	Total number of cases transmitted to the Government by the Working Group	23	1
IV.	Government responses		
	(a) Number of cases on which the Government has provided one or more specific responses	23	0
	(b) Cases clarified by the Government's responses a/	20	1
V.	Cases clarified by non-governmental sources	0	

a/ Persons arrested or abducted in Argentina: 5
Persons arrested and expelled to Brazil: 4
Persons detained and released: 4
Persons transferred to Argentina: 2
Persons transferred to Uruguay: 2
Persons dead: 1
Persons living abroad: 2

Peru*

Information reviewed and transmitted to the Government

361. The Working Group's activities in relation to Peru are recorded in its previous 12 reports to the Commission. 1/

362. During the period under review, the Working Group transmitted 16 newly reported cases of disappearance to the Government of Peru, of which 10 were reported to have occurred in 1993; 12 of those cases were transmitted under the urgent action procedure, and 3 of them were clarified in 1993. The Group also retransmitted to the Government a total of 22 cases containing additional information submitted by the sources.

363. By letters dated 15 June, 20 October and 3 December 1993, the Government was notified that 98 cases were now considered clarified, 97 based on its replies and one on the basis of further information provided by the source. The Government was also informed that in 13 cases the Group had applied the

* Mr. Diego Garcia-Sayan did not participate in the decisions relating to this subsection of the report.

six-month rule. By letters dated 22 January and 5 July 1993, the Government was reminded of reports of disappearances transmitted during the previous six months under the urgent action procedure.

364. By letter dated 15 June 1993, the Working Group reminded the Government of all outstanding cases. In the same letter, the Working Group notified the Government that five cases were deleted from the total number of cases, owing to duplication.

365. In a letter dated 20 October 1993, the Working Group informed the Government of allegations of a general nature which it had received concerning the phenomenon of disappearances in the country.

366. In 1992, the Government of Peru requested to receive the information on disappearances in a database file so that it could deal more quickly and efficiently with cases of disappearance reported in that country. In spite of the limited financial resources and personnel allocated to the Working Group, the Group was able, on 23 August 1993, to provide the Government of Peru with a program compatible with the Government's own database.

Information and views received from relatives of missing persons or from non-governmental organizations

367. The majority of the newly reported cases of disappearance and general information on the human rights in Peru were submitted by Amnesty International, the Centre of Study and Action for Peace (CEAPAZ), the Association for Human Rights (APRODEH), the Latin American Federation of Association of Relatives of Disappeared Detainees (FEDEFAM), the Ecumenical Foundation for Development and Peace, the National Commission on Human Rights (COMISEDH), the Episcopal Committee for Social Action, the General Confederation of Peruvian Workers, the Danielle Mitterrand Foundation, Americas Watch and by relatives of missing persons.

368. Ten of these cases transmitted were reported to have occurred in 1993, and six cases were reported to have occurred in 1992. The forces alleged to be responsible for the disappearances were the army, the police (including its different specialized branches such as the Directorate against Terrorists (DIRCOTE) and the Intelligence Service), paramilitary agents and civil defence forces. The victims included students, teachers, traders, persons believed to be involved in so-called "subversive activities", a judge and a 14 year-old child. The disappearances reportedly took place primarily in Huancayo and Lima, but also in San Martín and Cangallo.

369. The reports received by the Working Group all indicated a marked decrease in the number of disappearances occurring in Peru during the first half of 1993. According to one source, during the first eight months of 1993, 24 persons disappeared, compared with more than 150 reported disappearances during the same period of 1992. Another source reported 10 disappearances during the first six months of 1993. The majority of these cases are said to have occurred in Ucayali, as well as in Junín, Lima and San Martín, and to be attributed to members of the army or infantry battalions belonging to the

navy. While the decrease in number of disappearances has been welcomed by the organizations, caution, however, has been urged in interpreting this reduction as an indication of a supposed improvement in the situation.

370. According to the same sources, the decrease may be explained in part by a more selective approach by the armed forces counter-insurgency strategy, in particular against members or supporters of Sendero Luminoso or the Tupac Amaru Revolutionary Movement (MRTA). At the same time, there were reports of operations by paramilitary groups and summary executions which, taken as a whole, mean that the human rights situation remains disturbing.

371. Serious concern has been expressed by the sources that the vast majority of cases of disappearances have not been clarified nor the perpetrators brought to justice. Peru's armed forces are said to continue to enjoy almost total impunity.

372. The lack of cooperation by the security forces with civilian prosecutor investigations and the absence of an independent judiciary are major impediments to the due process of law. Reportedly, the vast majority of human rights complaints made to the public prosecutor's office during the past 10 years have not been investigated adequately owing to a lack of police and military cooperation, resources and official support, or because such cases were sent to military courts. Provincial prosecutors attempting to investigate complaints in the emergency zones are said to have been subjected to threats, obstructed and refused information by members of the armed forces. Witnesses and family members of victims are also reported to have been subjected to threats, harassment or, in some cases, even killed. In the light of this situation, the Peruvian judiciary does not provide or is unable to provide minimum safeguards against the continued violation of human rights.

373. It has been reported that during the night of 17 to 18 July 1992, members of the military entered the premises of the "Universidad Nacional de Educación Enrique Guzmán y Valle", also known as "La Cantuta", in Lima. (A military detachment is permanently placed at the entrance of the campus of this university.) Students were forced out of their dormitories and made to lie down on the floor. Nine students, whose names were on a list in the soldiers' possession, were selected and abducted, together with a professor. None of them was ever seen again. On 24 July 1992, a petition for habeas corpus was filed on their behalf, but the judge did not uphold the writ, stating that the military authorities had denied that they had been detained by the army.

374. Soon, allegations were made that the students and the professor had been extrajudicially executed and buried in clandestine graves on the night of their abduction. The families filed complaints with the "Mínisterio Publico". In a written communication to the provincial prosecutor investigating the case, the President of the Armed Forces Joint Command admitted that a military operation had taken place during the night of 17 to 18 July 1992, but stated that it was not possible to individualize the military personnel who had participated in the operation.

375. It has been reported also that on 2 April 1992 a member of Congress presented before it an unsigned document reportedly written by a group of military officials. In this document it was alleged that members of the

army had carried out the abduction and execution of the students and the professor at La Cantuta. They were said to be acting under the command of a member of the Servicio de Inteligencia Nacional (SIN) and adviser to the President of the Republic, in coordination with the director of the Dirección de Inteligencia del Ejército (DINTE), and with the full knowledge of the President of the Armed Forces Joint Command, General Nicolás de Bari Hermoza Ríos.

376. In July 1993, the existence of a clandestine grave on the outskirts of Lima was revealed. When the bodies were exhumed, the prosecutor found various objects, including some keys, lying next to them. In August 1993, a check by the same prosecutor showed that they were the keys to the lockers of Juan Gabriel Mariños Figueroa and Armando Armaro Cóndor at La Cantuta University. Several of the bodies have reportedly been identified following tests carried out by a laboratory in the United Kingdom. Several members of the military are said to have been detained.

377. During the suspension of constitutional rule by President Fujimori from 5 April 1992 until 30 December 1992, the President and the Council of Ministers ruled the country through Law Decrees which included wide-ranging anti-terrorism decrees allowing for summary proceedings against persons accused of terrorism. An assembly to draft a new constitution and act as an interim legislature was elected on 22 November 1992: the Democratic Constituent Congress. It was formally inaugurated on 30 December 1992 and consists of a single chamber of 80 members, in which those in favour of the Government hold a majority of seats. In January 1993, a Constitutional Commission was established with the task of drafting a constitution to replace that of 1979. This draft was submitted to a referendum on 31 October 1993 and accepted. The text of the draft amends the 1979 Constitution in respect of various matters relating to human rights. For instance, international human rights treaties would no longer have institutional status, and the death penalty would be reintroduced for offences for which it had been eliminated.

378. All the non-governmental organizations acknowledged that Peru was experiencing a situation of extreme violence and that the terrorist activities constituted one of the most important factors contributing to insecurity in the country. From 1 January to 30 June 1993, a total of 705 terrorist attacks were reportedly carried out by Sendero Luminoso and the MRTA in Lima and rural areas, in which more than 400 persons were killed. On 19 August 1993, Sendero Luminoso is said to have killed 61 indigenous men, women and children of the Ashaninka population in the valley of Mazamari, province of Satipo, department of Junín. According to information received by the Working Group, during the first six months of 1993, 853 persons were killed and 427 wounded in political violence. Almost half of the victims (45 per cent) are said to be civilians, 16 per cent members of the security forces and 39 per cent members of armed opposition groups. Fifty-four per cent of the deaths reportedly occurred in confrontations between the security forces and armed groups, 35 per cent were due to political killings and 2 per cent as the result of summary executions.

379. The view was expressed that the strengthening of democratic institutions and the independence of the judiciary, as well as the provision of funds for the protection of judges and public prosecutors, would be essential

prerequisites to make their action more efficient for the protection of human rights and in the prosecution and punishment of those found to be responsible for the violence.

Information and views provided by the Government

380. By a note verbale received on 12 January 1993, the Government of Peru responded to a letter dated 23 September 1992 from the Working Group containing a number of questions relating to the Working Group's observations and recommendations contained in two reports on their visits to Peru. The questions referred to the following issues: (a) sanctions provided for by law in respect of military authorities or their subordinates who do not obey the instructions they receive to admit the entry of officials of the Office of the Attorney-General to military installations; (b) measures taken to provide support for the work of the judiciary; (c) court jurisdiction to hear crimes committed by the civil defence forces; (d) rules governing the activities of civil defence forces; (e) training given to these forces and how their activities are supervised; (f) records or registries of detention and their availability to relatives of missing persons.

381. The Government of Peru replied as follows. In connection with the first question, it stated that it issued Decree-Law No. 25592, which imposes a sentence of not less than 15 years' imprisonment and disqualification from office on public servants or officials who have deprived a person of his liberty by ordering or taking action which results in his disappearance.

382. In connection with the work of the judiciary, it stated that "the remedy of habeas corpus has been operating effectively and, if a request for habeas corpus was ruled inadmissible, this was due to the errors which were contained in the request itself".

383. It further stated that the allegations against the armed forces submitted by the non-governmental organizations were, in the majority of cases, false and malicious. Only in a few isolated cases beyond the control of the Command had there been elements in the armed forces and police involved in cases of disappearance who had refused to grant the protection required by members of the Public Prosecutor's Department. However, once the persons who took such an attitude had been identified, and as soon as the case became known, the matter was dealt with by the Office of the Attorney-General.

384. When members of the armed forces perpetrated acts which violate human rights, it was the responsibility of the Joint Command to undertake the administrative investigation and to apply their own internal regulations relating to the discipline and conduct of such personnel.

385. In connection with the cases of military or police personnel tried or convicted for their participation in disappearances in 1991 and 1992, it was stated that the relevant information must be provided by the judiciary, since the trial of those cases was the responsibility of the judicial bodies and not the Public Prosecutor's Department.

386. The peasant communities, under Act No. 24656, were authorized to institute peasant patrols. Under Decree-Law No. 741, they were authorized to use weapons for the purposes of self-defence in their communities. The supervision of arrests and the handing-over of detainees were also governed by the Code of Criminal Procedure.

387. In response to section 5 of the questionnaire contained in the communication under consideration, it was stated that the Attorney-General of the Nation had concluded with the United States Agency of International Development a number of agreements aimed at implementing the register referred to; a direct result of the existence of that register was the statistical information which formed part of the report. That register and the information it contained were available not only to the International Committee of the Red Cross, but also to lawyers responsible for proceedings relating to cases reflected in the register.

388. By various notes verbales addressed to the Working Group between 4 December 1992 and 29 November 1993, the Government of Peru provided information on numerous cases of disappearance transmitted to it. In 24 cases, the Government reported that the person concerned had not been detained by the authorities. In eight cases it reported that it could not determine the persons' whereabouts. In 38 cases the Government reported that the subjects were at liberty. In seven cases, the persons concerned were reported to be detained for presumed terrorist activities. In three cases the persons concerned were reported to have joined the army. Eight persons were reported to have been found dead. In 10 cases the Government was awaiting the results of DNA tests being conducted on human remains by the London Hospital Medical College. The Government also reported that in 68 cases the persons concerned had voted in recent elections and that 220 cases were under investigation.

389. By various notes verbales the Government of Peru informed the Working Group of the following matters:

(a) The Government submitted to the Working Group a copy of the agreement on the procedures for visits by the International Committee of the Red Cross to penal establishments in Peru. By note verbale dated 20 April 1993, the Government transmitted the instructions entitled "Rules of procedure for processing reports of alleged human rights violations", prepared by the Ministry of the Interior. This document establishes rules of procedure for processing complaints of human rights violations at both the national and international levels, focusing on achieving expeditious procedure. The provisions apply to chiefs of units and subunits of the National Police of Peru, and concern the promptness with which they are required to act when informed of human rights violations and their obligation to grant every facility to officials of the Public Prosecutor's Department.